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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93-ANE-14; No. 33-ANE-01]

Special Conditions; Soloy Corporation, Soloy Dual Pac Engine (Formally Soloy Dual Pac, Inc.)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Soloy Corporation, Soloy Dual Pac engine (formally Soloy Dual Pac Inc.). This engine will have a novel design feature associated with its configuration. The Soloy Dual Pac engine is a propulsion system in which two Pratt & Whitney Canada (PWC) Model PT6 turbine engines are combined through a common gearbox to drive a single output propeller shaft. The Soloy Dual Pac engine is intended to provide a degree of continuous operation following the failure of one of the PWC Model PT6 engines. The applicable regulations do not contain adequate or appropriate safety standards for such a configuration. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATES: March 21, 1997.

FOR FURTHER INFORMATION CONTACT:

Kathrine Rask, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone (206) 227-1547; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Background

General

On November 9, 1990, Soloy Corporation applied for a supplemental type certificate for the Soloy Dual Pac engine. The Soloy Dual Pac engine is a propulsion concept in which two PWC Model PT6 engines, currently approved under Type Certificate No. E4EA, drive a single propeller shaft through a combining gearbox. The Soloy Dual Pac engine incorporates redundant freewheeling, drive, governing, and lubricating systems. A system of one-way clutches both prevents the propeller shaft from driving the engine input shafts and allows either engine to drive the propeller should the other engine fail. The supplemental type certificate for the Soloy Dual Pac engine is to be based on the type certificate of the PWC Model PT6 engine. On February 4, 1994, the FAA published a notice of proposed special conditions (59 FR 5356) for "Soloy Dual Pac, Inc., Soloy Dual Pac Engine", requesting public comments. Since that publication, the name has changed from Soloy Dual Pac, Inc., to Soloy Corporation.

Safety Analysis

The certification basis of the PWC Model PT6 engine was established before the introduction of § 33.75 of the Federal Aviation Regulation (FAR) (Safety Analysis). Section 33.75 addresses four types of engine failure conditions which are particularly hazardous to the safety of the aircraft. The objective of § 33.75 is to require an analysis to be performed at the engine level which establishes that any probable single or multiple failure, or any probable improper operation will not cause the engine to catch fire, burst, generate loads greater than the ultimate loads for the engine mount, or lose the capability to shut down. Consequently, it is considered appropriate to add a safety analysis requirement to the Soloy Dual Pac engine program.

Also, one objective of the Soloy Dual Pac engine is to provide continued operation after the failure of one PWC Model PT6 engine. While the safety analysis regulations of § 33.75 are more extensive than those of the PWC Model PT6 engine certification basis, they still

do not address this special "continue to run" objective.

Therefore, in light of the above, it was proposed that a safety analysis requirement, modeled after § 33.75 and expanded to address continued operation after a single engine failure, be included in the Soloy Dual Pac engine certification basis.

Uncontained Engine Failure

It is assumed that the Soloy Dual Pac engine is intended for use in an aircraft and will be part of an aircraft certification program in the future. Minimizing the hazards to the aircraft from uncontained engine debris will be a very important requirement in any such certification program. In addition, for a design such as the Dual Pac, many design features intended to minimize such hazards would be determined at the engine design stage. Therefore, this issue must be addressed initially during the Soloy Dual Pac engine certification program, and may also be addressed during the aircraft installation certification program.

As stated above, one objective of a Soloy Dual Pac engine-equipped aircraft could be continued safe flight and landing after the failure of one PWC Model PT6 engine. In order for the Soloy Dual Pac engine to achieve this objective, it must continue to produce adequate and controllable torque after such a failure. Service experience, however, shows that uncontained engine failures can result in high velocity fragment penetration of, among other things, other engines. This could render the other engine inoperative as well. In the case of the Soloy Dual Pac engine, such an event could end all torque production. Therefore, the Soloy Dual Pac engine must demonstrate that the two PWC Model PT6 engines should be protected from each other in order to minimize the hazards associated with this event.

Gearbox Design, Functioning, and Endurance Testing

Power transmission systems, such as gearboxes, have not been specifically addressed by engine certification regulations. Previously, engines incorporating gearboxes, such as fan reduction gearing or accessory gearboxes, have been evaluated during the course of engine block tests and other engine certification activities. Transmissions such as those used in

rotorcraft, however, have been addressed in rotor drive criteria contained in rotorcraft certification regulations. Since the Soloy Dual Pac engine propulsion drive system is part of the engine, the changes to part 23 of the FAR, which were published as a notice of proposed rulemaking (NPRM), "Small Airplane Airworthiness Review Program Notice No. 3," in the Federal Register on October 3, 1990 (55 FR 40598); and § 33.87 of the FAR (amended through Amendment 33-5), will be used as a basis for special conditions intended to establish standards to address the design, function, and endurance testing of the gearbox. Section 33.87 regulations have been included in order to establish a comprehensive standards to address the turbine interface with the gearbox.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Soloy Corporation, must show that the Soloy Dual Pac engine meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E4EA, or the requirements of the applicable regulations in effect on the date of the application. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. E4EA are as follows:

(a) FAR § 21.29, Issue of Type Certificate: Import Products.

(b) Civil Air Regulations (CAR) part 10, Certification and Approval of Import Aircraft and Related Products, dated March 28, 1955.

(c) FAR part 33, Airworthiness Standards: Aircraft Engines, effective February 1, 1965, as amended by Amendments 33-1 through 33-5 inclusive.

If the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with the regulations in effect on the date of application for the change that the FAA finds necessary to provide a level of safety equal to that established by the regulations incorporated by reference. Due to the potential applications of the Soloy Dual Pac engine, the FAA has determined that it must also be shown to comply with part 33 of the FAR, effective February 1, 1965, as amended by Amendment 33-1 through 33-5 inclusive, plus the following sections:

(a) Section 33.7, Amendment 33-12, Engine ratings and operating limitations.

(b) Section 33.67, Amendment 33-10, Fuel system.

(c) Section 33.68, Amendment 33-10, Induction system icing.

(d) Section 33.96, Amendment 33-11, Engine test in auxiliary power unit mode.

(e) Section 21.115(a), Applicable requirements.

In addition, compliance must be shown with part 34 of the FAR (Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes); these special conditions contained herein on safety analysis, gearbox design, functioning, and endurance testing, and uncontained engine failure; as well as any applicable equivalent safety findings and any applicable exemptions.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Soloy Dual Pac engine because of its novel or unusual design feature. Therefore, the Administrator prescribes special conditions under the provision of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. One comment were received supporting the additional safety standards for the Soloy Dual Pac engine in the notice of proposed special conditions as published.

The FAA has gained a better technical understanding of the Soloy Dual Pac engine design since the notice of proposed special conditions were published in the Federal Register.

One of the critical systems of the Soloy Dual Pac engine is the single propeller. Paragraph(c)(1)(iv) was developed to ensure that a loss of oil pressure to the propeller governing system or the propeller shaft lubrication would not result in imminent loss of propeller speed or control. The zero oil pressure test as published in the notice of proposed special conditions does not adequately address these concerns. The blade pitch control system of the Soloy Dual Pac engine propeller installation is expected to contain a fail safe setting that is not equivalent to the 100 percent output speed required in the notice of

proposed special conditions. When the propeller governor loses oil pressure, it will automatically revert to a predetermined mechanical limit, a so called "get home" pitch and speed. In addition, the 15 minute requirement (the notice of proposed special conditions stated "15 seconds," however this was a typographical error) is not adequate for the type of aircraft installations where the Soloy Dual Pac is expected to be used. These airplanes, operating under part 121 of the FAR, will be allowed to operate over routes that contain a point up to one hour flying time from an adequate airport. The test of less than one hour of continued safe operation would not fulfill the intent of the paragraph (c)(1)(iv). The FAA has determined that paragraph (c)(1)(iv) as proposed, which set forth requirements for a zero oil pressure test of the gearbox, does not address the intent of this paragraph and therefore it is modified in these final special conditions. The revised test requirements in the final special conditions address more accurately the airplane failure scenario intended to be evaluated. However, the demonstrated torque and rotational speed must be included in the instruction manual for installing and operating the engine required in § 33.5 of the FAR.

Conclusion

This action affects only certain novel or unusual design features on one model engine configuration. It is not a rule of general applicability, and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, 44704

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Soloy Corporation, Soloy Dual Pac engine:

(a) Safety Analysis.

It must be shown by analysis that any probable malfunction, or any probable single or multiple failure, or any probable improper operation of the Soloy Dual Pac engine will not cause the Soloy Dual Pac engine to—

(1) Catch fire;

(2) Burst (release hazardous fragments through the engine case);

(3) Generate loads greater than those ultimate loads specified in § 33.23(a);
 (4) Lose the capability of being shut down; or

(5) Lose the capability of providing controllable 50 percent of rated power.

(b) *Uncontained Engine Failure.*

Design precautions must be taken to minimize the damage to one PWC PT6 engine, in the event of uncontained engine failure of the other PWC Model PT6 engine, in order for the unfailed engine to be capable of continued torque production after such a failure.

(c) *Gearbox Design, Functioning, and Endurance Testing.*

(1) *Propulsion Drive System Design.* Propulsion drive systems, as defined in paragraph (c)(1)(i), must meet the requirements as set forth in paragraphs (c) (1) through (6).

(i) The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system.

(ii) Each propulsion drive system, powered by more than one engine, must be arranged so that the propeller shaft and its control will continue to be powered by the remaining engine(s) if any engine fails.

(iii) Each multiengine propulsion drive system must incorporate a device to automatically disengage any engine from the propeller shaft, if that engine fails.

(iv) The oil for components of the propulsion drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure operation with any engine inoperative. The propulsion drive system must be able to continue safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant which is determined to be the most critical of the anticipated flight conditions. The drive system shall operate at this condition for at least one hour after perception by the flight crew of the lubrication system failure or loss of lubricant. The demonstrated torque and rotational speed must be included in the instructional manual for installing and operating the engine required in § 33.5 of the Federal Aviation Regulations (FAR).

(v) Torque limiting means must be provided on all accessory drives that are located on the propulsion drive system,

in order to prevent the torque limits established for those drives from being exceeded.

(vi) There must be means to provide continued propulsion system control and operation, following the failure of an engine to transmission drive shaft.

(vii) In addition to the propulsion drive system complying with the requirements of paragraph (c)(1)(iii), the propulsion drive system, powered by more than one engine, must be designed so that torque to the propeller shaft is not interrupted after failure of any engine or element in the propeller shaft drive system; and examined in detail to determine all components and their failure modes that would be vital to continued control and operation of the propulsion drive system.

(viii) For each component and its failure modes identified by this examination, it must be shown by appropriate test that such a failure is not likely to occur in the system component's service life established by these tests; or that the system is designed so continued control and operation can be accomplished after occurrence of the failure.

(2) *Propulsion Drive System Limitations.* The propulsion drive system limitations must be established so that they do not exceed the corresponding limits approved for the engine, propeller shaft, and drive system components.

(i) For the Soloy Dual Pac engine, takeoff power must be limited by—

(A) The powerplant maximum rotational speed for takeoff power, and the maximum rotational propeller shaft speed may not be greater than the values determined by the propulsion drive system type design, or the maximum value shown during type tests.

(B) The time limit for the use of power, gas temperature, and speed corresponding to the limitations established in paragraph (i) of this section.

(C) The powerplant maximum allowable gas temperature at maximum allowable power or torque for each engine, considering the power input limitations of the transmission with all engines operating; and

(D) The powerplant maximum allowable gas temperature at maximum allowable or torque of each engine, considering the power input limitations of the transmission with one engine inoperative.

(ii) For the Soloy Dual Pac engine, continuous power must be limited by—

(A) The powerplant maximum rotational speed for continuous power. The maximum rotational propeller shaft speed may not be greater than the values

determined by the propulsion drive system type design maximum value shown during type tests.

(B) The powerplant maximum allowable gas temperature of continuous power and the maximum allowable power or torque for each engine, considering the power input limitations of the transmission with both engines operating; and

(C) Powerplant maximum allowable gas temperature at maximum allowable power or torque of each engine, considering the power input limitations of the transmission with one engine inoperative.

(3) *Propulsion Drive System Instruments.* Connections for the following instruments must be provided for any gearbox or transmission:

(i) An oil pressure warning device for each pressure-lubricated gearbox to indicate when the oil pressure falls below a safe value;

(ii) A low oil quantity warning indicator for each gear box, if lubricant is self-contained;

(iii) An oil temperature warning device to indicate unsafe oil temperatures in each gearbox;

(iv) A tachometer for each propeller shaft;

(v) A torquemeter for each transmission driving a propeller shaft; and

(vi) A chip detecting and indicating system for each gearbox.

(4) *Propulsion Drive System Endurance Tests.* Each part tested, as prescribed in this section, must be in a serviceable condition at the end of the tests. No intervening disassembly that might affect these results may be conducted.

(i) *Endurance tests; general.* The propulsion system, as defined in paragraph (c)(1) must be tested as prescribed in paragraphs (c)(4)(ii) through (c)(4)(ix), for at least 200 hours plus the time required to meet paragraph (c)(4)(ix). For the 200-hour portion, these tests must be conducted as follows:

(A) Twenty each, ten-hour test cycles consisting of the test times and procedures in paragraphs (c)(4)(ii) through (c)(4)(viii); and

(B) The test torque must be determined by actual powerplant limitations.

(ii) *Endurance tests; takeoff torque run.* The takeoff torque run endurance test must be conducted as follows:

(A) The takeoff torque run must consist of a one-hour run on the engine(s) at the torque corresponding to takeoff power, but with the engine power setting alternately cycled every

five minutes to as low an engine idle speed as practicable.

(B) Deceleration and acceleration of the engines and/or of individual engines and drive system must be performed at the maximum rate. (This corresponds to a one-second power setting change from idle to takeoff setting, and one second from takeoff setting to idle.)

(C) The time duration of all engines at takeoff power setting must total one hour and does not include the time required to go from takeoff to idle and back to take off speed.

(iii) *Endurance tests; maximum continuous run.* Three hours of continuous operation, at the torque corresponding to maximum continuous power and speed, must be conducted.

(iv) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation, at the torque corresponding to 90 percent of maximum continuous power, must be conducted at maximum continuous rotational propeller shaft speed.

(v) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation, at the torque corresponding to 80 percent of maximum power, must be conducted at the minimum rotational propeller shaft speed intended for this power.

(vi) *Endurance tests; 60 percent of maximum continuous run.* Two hours of continuous operation, at the torque corresponding to 60 percent of maximum continuous power, must be conducted at the minimum rotational propeller shaft speed intended for this power.

(vii) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, one hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of 20 cycles. This testing is to be equally divided between the following four conditions: (1) engine #1 "ON"/engine #2 "IDLE"; (2) engine #1 "ON"/engine #2 "OFF"; (3) engine #1 "IDLE"/engine #2 "ON"; (4) engine #1 "OFF"/engine #2 "ON". If no detrimental conditions results, an additional hour of operation in compliance with paragraph (ii) of this section must be conducted.

(viii) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at the torque

corresponding to maximum continuous power, and at 110 percent of rated maximum continuous rotational propeller shaft speed. If the overspeed is limited to less than 110 percent of maximum continuous speed by the speed and torque limiting devices, the speed used must be the highest speed allowable, assuming that speed and torque limiting devices, if any, function properly.

(ix) *Endurance tests; one-engine-out application.* A total of 160 full differential power applications must be made at takeoff torque and RPM. If, during these tests, it is found that a critical dynamic condition exists, an investigative assessment to determine the cause shall be performed throughout the torque/speed range. In each of the 160 engine power setting cycles (160 per engine drive branch) a full differential power application must be performed. In each cycle, the transition from clutch engagement to disengagement must occur at the critical condition for clutch and shaft wear.

(5) *Additional Propulsion Drive System Tests.* Additional dynamic, endurance, and operational test and vibratory investigations must be performed to determine that the drive mechanism is safe. The following additional tests and conditions apply:

(i) If the torque output of all engines to the transmission can exceed the highest engine or transmission torque limit, the following tests must be conducted. Under conditions associated with all engines operating, apply 200 cycles to the drive system for 10 seconds each of a torque that is at least equal to the lesser of—

(A) The maximum torque used in complying with paragraph (4)(ii) plus 10 percent; or

(B) The maximum torque attainable under normal operating conditions, assuming that any torque limiting devices function properly.

(ii) With each engine alternately inoperative, apply to the remaining transmission inputs the maximum transient torque attainable under normal operating condition, assuming that any torque limiting devices function properly. Each transmission input must be tested at this maximum torque for at least 15 minutes.

(iii) After completion of the 200 hour endurance test and without intervening major disassembly, the drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at a speed of at least 120 percent of maximum continuous speed, or other maximum overspeed that is likely to

occur, plus a margin of speed approved by the Administrator for that overspeed condition. These runs must be conducted as follows:

(A) Overspeed runs must be alternated with stabilizing runs from 1 to 5 minutes duration, each 60 to 80 percent of maximum continuous speed.

(B) Acceleration and deceleration must be accomplished in a period no longer than 10 seconds, and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

(iv) Each part tested, as prescribed in this section, must be in serviceable condition at the end of the tests. No intervening disassembly that might affect test results may be conducted.

(v) If drive shaft couplings are used and shaft misalignment or deflections are probable, loads must be determined in establishing the installation limits affecting misalignment. These loads must be combined to show adequate fatigue life.

(vi) The vibration test specified in § 33.83 must be applied to engine-furnished components of the propulsion drive system. The test must include the gear case and each component in the combining gear box whose failure due to vibration could cause unsafe operation of the engine.

(6) *Propulsion Drive System Shafting Critical Speed.* The critical speeds of any shafting must be determined by test, except that analytical methods may be used if reliable methods of analysis are available for the particular design.

(i) If any critical speed lies within, or close to, the operating ranges for idling and power on conditions, the stresses occurring at that speed must be within design limits. This must be shown by tests.

(ii) If analytical methods are used and show that no critical speed lies within the permissible operating ranges, the margins between the calculated critical speeds and the limits of the allowable operating ranges must be adequate to allow for possible variations between the computed and actual values.

Issued in Burlington, Massachusetts, on February 7, 1997.

James C. Jones,
Acting Manager, Engine and Propeller
Directorate, Aircraft Certification Service.
[FR Doc. 97-4067 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39**[Docket No. 96-NM-97-AD; Amendment 39-9917; AD 97-03-12]****RIN 2120-AA64****Airworthiness Directives; Jetstream Model 4101 Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Jetstream Model 4101 airplanes, that requires a one-time inspection for damage caused by arcing and overheating of the electrical ground posts ("earth posts") and ground cables for the direct current (DC) power generation and propeller de-icing systems of the left and right engines; and repair and replacement, if necessary. This action corrects the AD number assigned to that AD.

DATES: Effective March 14, 1997.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of March 14, 1997 (62 FR 5743, February 7, 1997).

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: On January 29, 1997, the FAA issued AD 97-03-12, amendment 39-9917 (62 FR 5743, February 7, 1997), which is applicable to certain Jetstream Model 4101 airplanes. That AD requires a one-time inspection for damage caused by arcing and overheating of the electrical ground posts ("earth posts") and ground cables for the direct current (DC) power generation and propeller de-icing systems of the left and right engines; and repair and replacement, if necessary. That action was prompted by reports indicating that earth posts on some airplanes had failed due to overheating. The actions specified by that AD are intended to prevent potential consequences of overheating, such as failure of the DC power generation and propeller de-icing systems.

Since the issuance of that AD, the FAA has become aware of the fact that the document that was published in the Federal Register contained the incorrect AD number that had been assigned to that action. The published version

indicated an AD number of 96-03-12. However, the correct AD number is 97-03-12.

Action is taken herein to correct the AD number to 97-03-12 and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date of the rule remains March 14, 1997.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

§ 39.13 [Corrected]

On page 5743, in the issue of February 7, 1997, in the second column, the heading that identifies the pertinent agency numbers is corrected to read as follows:

* * * * *

[Docket No. 96-NM-97-AD; Amendment 39-9917, AD 97-03-12]

* * * * *

On page 5744, in the issue of February 7, 1997, in the first column, the introductory text that specifies pertinent agency numbers and the airplane manufacturer is corrected to read as follows:

* * * * *

97-03-12 Jetstream Aircraft Limited: Amendment 39-9917. Docket 96-NM-97-AD.

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Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3964 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39**[Docket No. 96-CE-45-AD; Amendment 39-9938; AD 97-04-13]****RIN 2120-AA64****Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU-2B Series Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Mitsubishi Heavy Industries, Ltd., (Mitsubishi) MU-2B series airplanes. This AD requires removing the vent check valve assembly from the bulkhead between the fuel tanks. This AD results from an incident where both engines on an affected airplane failed near the end of a flight because of lack of fuel to the engines. The incident is

attributed to the fuel filler caps on the top of the wings not sealing correctly. The actions specified by this AD are intended to prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown.

DATES: Effective April 16, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 16, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. 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-45-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. Eric M. Smith, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5260; facsimile (310) 627-5210.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Mitsubishi MU-2B series airplanes was published in the Federal Register as a notice of proposed rulemaking (NPRM) on October 30, 1996 (61 FR 53939). The NPRM proposed to require removing the vent check valve assembly from the bulkhead between the fuel tanks. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Mitsubishi MU-2 Service Bulletin No. 130A, dated July 19, 1971.

The NPRM is the result of an incident where both engines on an affected airplane failed near the end of a flight because of lack of fuel to the engines. The incident is attributed to the fuel filler caps on the top of the wings not sealing correctly.

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.

The FAA's Determination

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.

Compliance Time of This AD

The compliance time for this AD is presented in calendar time instead of hours time-in-service. The fuel filler cap may not seal properly regardless of whether the airplane is in operation. For this reason, the FAA has determined that a calendar time for compliance is the most desirable.

Cost Impact

The FAA estimates that 14 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours (average: 4 workhours for seven airplanes and 2 workhours for seven airplanes) per airplane to accomplish the required action, and that the average labor rate is approximately \$60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,520.

The above figure is based on the presumption that no owner/operator of the affected airplanes has accomplished the required vent check valve assembly removal. The FAA is aware that seven of the affected airplanes are already in compliance with this AD. With this information in mind, the cost impact upon U.S. operators/owners is reduced by \$1,260 from \$2,520 to \$1,260.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97-04-13 Mitsubishi Heavy Industries, Ltd.: Amendment 39-9938; Docket No. 96-CE-45-AD.

Applicability: Models MU-2B, MU-2B-10, MU-2B-15, MU-2B-20, and MU-2B-30 airplanes (serial numbers 004 through 035, 037, 038, 101 through 230, 502 through 525, and 527 through 547), 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 60 calendar days after the effective date of this AD, unless already accomplished.

To prevent the inability of both engines to utilize the entire fuel supply because of the outboard fuel not transferring to the center tank, which could result in an uncommanded engine shutdown, accomplish the following:

(a) Remove the vent check valve assembly in accordance with the instructions in Mitsubishi MU-2 Service Bulletin No. 130A, dated July 19, 1971.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Los Angeles Aircraft Certification Office (ACO), 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 ACO.

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

(d) The removal required by this AD shall be done in accordance with Mitsubishi MU-2 Service Bulletin No. 130A, dated July 19, 1971. 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 Mitsubishi Heavy Industries, Ltd., Nagoya Aerospace Systems, 10, Oyecho, Minato-Ku, Nagoya, Japan. 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., suite 700, Washington, DC.

(e) This amendment (39-9938) becomes effective on April 16, 1997. Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,
*Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 97-3960 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-234-AD; Amendment 39-9929; AD 97-04-05]

RIN 2120-AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires a one-time inspection of the airplane records to determine the modification status of the elevator trim servo, and, if necessary, inspections to determine the serial number of the servo, and repetitive inspections for looseness or movement of the motor housing of the servo. This action also requires replacement of certain elevator trim servos with a serviceable assembly. This

amendment is prompted by reports of the motor housing separating from the elevator trim servo and the consequent release of certain component parts, due to inadequate locking of screws that were installed during assembly of the servos. The actions specified in this AD are intended to prevent the motor housing of the elevator trim servo from separating and releasing component parts that could lodge in and jam the elevator controls, and result in reduced pitch control of the airplane.

DATES: Effective March 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-234-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it has received reports indicating that separation of the motor housing from the elevator trim servo and consequent release of motor gearbox components has occurred on a Jetstream Model 4101 airplane. Investigation revealed that certain elevator trim servo units manufactured by Honeywell were assembled using screws with inadequate locking capability. Certain of these screws fasten the servo motor inner gear casing to the mounting flange and some screws fasten the motor cap/sleeve to the inner gear casing. The inadequate locking of those screws caused the

separation of the motor housing from the servo unit, and resulted in the release of the motor gearbox components. Those released components could lodge in the elevator controls and result in an elevator jam. This condition, if not corrected, could result in reduced control of the primary pitch control of the airplane.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996, which describes the following procedures:

1. A one-time inspection of the airplane records or a visual inspection of the servo to determine if the elevator trim servo is at Modification B standard or greater.

2. For those airplanes on which the elevator trim servo is not at Modification B or greater, the alert service bulletin describes procedures for an inspection of the airplane records or a visual inspection of the elevator trim servo to determine the serial number of the elevator trim servo, procedures for repetitive visual and tactile inspections of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, and repair of replacement of the elevator trim servo with a serviceable servo, if necessary. Replacement of the servo with a serviceable assembly would eliminate the need for repetitive inspections of the motor housing. The alert service bulletin also describes procedures for replacement of certain servos specified in the alert service bulletin with a servo at Modification B or later standard.

The CAA 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 Requirements of 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, this AD is being issued to prevent the motor housing of the elevator trim servo from separating from the servo assembly and releasing component parts that could lodge in and jam the elevator control, and result in reduced pitch control of the airplane. This AD requires the following:

1. A one-time inspection of the airplane records or a visual inspection of the servo to determine if the elevator trim servo is at Modification B standard or greater.

2. For those airplanes on which the elevator trim servo is not at Modification B standard or greater, an inspection of the airplane records to determine the serial number of the elevator trim servo, repetitive visual and tactile inspections of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, and replacement of the elevator trim servo with a serviceable servo, as necessary.

3. Replacement of certain elevator trim servos with a serviceable assembly.

The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Determine of Rule's Effective Date

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

Comments Invited

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

action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-234-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97-04-05 Jetstream: Amendment 39-9929.

Docket 96-NM-234-AD.

Applicability: Model 4101 airplanes having serial numbers 41004 through 41090 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 (e) 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 separation of the motor housing of the elevator trim servo from the servo body that would allow detachment of component parts that could lodge in and jam the elevator control, and result in reduced control of the primary pitch of the airplane; accomplish the following:

Note 2: Accomplishment of actions required by this AD in accordance with Jetstream Alert Service Bulletin J41-A22-008, dated July 18, 1996, is *not* considered acceptable for compliance with the applicable action specified in this AD.

(a) Within 14 days after the effective date of this AD: Perform either an inspection of the airplane records or a visual inspection of the elevator trim servo, to determine if the elevator trim servo is at Modification B standard or greater, in accordance with Jetstream Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996.

(b) If the inspection required by paragraph (a) of this AD reveals that the elevator trim servo is at Modification B standard or greater: No further action is required by this AD.

(c) If the inspection required by paragraph (a) of this AD reveals that the elevator trim servo is not at Modification B standard or greater: Prior to further flight, perform either an inspection of the airplane records or a visual inspection of the elevator trim servo, to determine if the serial number of the elevator trim servo is specified in paragraph 1.M.(4)(b) of Jetstream Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996; and, regardless of the serial

number, perform both a visual inspection and a tactile inspection of the motor housing of the elevator trim servo to determine if the motor housing is loose or moves, in accordance with the alert service bulletin.

(1) If the motor housing does not move and is not loose, and the elevator trim servo does not have a serial number that is specified in paragraph 1.M.(4)(b) of the alert service bulletin: No further action is required by this AD.

(2) If the motor housing does not move and is not loose, but the elevator trim servo has a serial number that is specified in paragraph 1.M.(4)(b) of the alert service bulletin: Repeat the visual and tactile inspections of the elevator trim servo thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (d) of this AD are accomplished.

(3) If the motor housing moves or is loose, regardless of serial number: Prior to further flight, accomplish the requirements of either paragraph (c)(3)(i) or (c)(3)(ii) of this AD:

(i) Secure the elevator trim servo and deactivate the autopilot system, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat the visual and tactile inspections at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (d) of this AD are accomplished. Or

(ii) Replace the elevator trim servo with an "acceptable replacement" servo, as defined by the "Note" in Paragraph 2., Accomplishment Instructions, of Jetstream Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996. Accomplish the replacement in accordance with Part 4 of the Accomplishment Instructions of the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(d) For airplanes subject to paragraph (c)(2) or (c)(3)(i) of this AD: Within 90 days after the effective date of this AD, replace the elevator trim servo with an "acceptable replacement" servo, as defined by the "Note" in Paragraph 2., Accomplishment Instructions, of Jetstream Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996. Accomplish the replacement in accordance with Part 4 of the Accomplishment Instructions of the alert service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. 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.

(f) 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.

(g) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41-A22-008, Revision 1, dated November 21, 1996, which contains the specified list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-10, 15	1	November 21, 1996.
11-14, 16, 17.	(1)	July 18, 1996.

¹Original.

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 Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. 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.

(h) This amendment becomes effective on March 6, 1997.

Issued in Renton, Washington, on February 6, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3535 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 96-ANE-42; Amendment 39-9912; AD 97-03-06]

RIN 2120-AA64

Airworthiness Directives; Auxiliary Power International Corporation Model APS3200 Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Auxiliary Power International Corporation (APIC) Model APS3200 Auxiliary Power Units (APUs). This action requires replacement of the existing Electronic Control Box (ECB), incorporating its On Board Replaceable Module (OBRM) programmed with originally approved software version 2.0.2 or 3.2 with improved software version 4.1, or replacement of the existing OBRM of the ECB programmed with version 2.0.2 or version 3.2 with a new OBRM programmed with software

version 4.1. This amendment is prompted by reports of continued fuel flow to the APU after the APU was commanded to shutdown, resulting in internal APU fires. The actions specified in this AD are intended to prevent internal APU fires due to ECB malfunction, which, if left unnoticed by flight or ground crews, could result in damage to the aircraft.

DATES: Effective March 6, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 6, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-42, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Auxiliary Power International Corporation (APIC), 4450 Ruffin Rd., P.O. Box 85757, San Diego, CA 92193-9090; telephone (619) 627-6501, fax (619) 627-6502. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Guy Dalla Riva, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712-4137; telephone (310) 627-5248; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of four Auxiliary Power Units (APU) internal fires after shutdown of Auxiliary Power International Corporation (APIC) Model APS3200 APUs. The investigations revealed two possible causes of these fires: first, in three of the events, a software deficiency in the Electronic Control Box (ECB) allowed the APU fuel shut-off valve to remain open; second, in one unconfirmed event, possible fuel system contamination could have kept the valve from closing completely. This AD addresses the ECB software deficiency only. It does not address valve malfunction caused by fuel system contamination.

These ECB malfunctions may result in an internal fire within the APU, in the APU plenum, air intake, and possibly in

the tail of the aircraft. This condition, if not corrected, could result in an internal APU fire due to ECB malfunction, which, if left unnoticed by flight or ground crews, could result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of APIC Service Bulletin (SB) No. 4500001-49-52, dated October 1, 1996, that describes procedures for replacement of the existing On Board Replaceable Module (OBRM) of the ECB incorporating the software versions 2.0.2 or 3.2 with a new OBRM programmed with software version 4.1. This software also commands closing of the aircraft APU firewall fuel shut-off valve in addition to the APU fuel shut-off valve during APU shutdowns.

Since an unsafe condition has been identified that is likely to exist or develop on other APUs of the same type design, this AD is being issued to prevent an APU fire due to ECB malfunction, which could result in damage to the aircraft. This AD requires replacement of the existing APU ECB (incorporating the originally approved software versions 2.0.2 or 3.2) with improved software version 4.1, or installation of an OBRM programmed with software version 4.1 in the ECB prior to 30 days after the effective date of this AD. This calendar end-date is based on parts availability. The actions are required to be accomplished in accordance with the SB described previously.

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

Comments Invited

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

action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-ANE-42." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97-03-06 Auxiliary Power International Corporation: Amendment 39-9912. Docket 96-ANE-42.

Applicability: Auxiliary Power International Corporation (APIC) Model APS3200 Auxiliary Power Units (APUs), Assembly Part Number (P/N) 4500000, incorporating Electronic Control Box (ECB), P/N 4500003E, with software version 2.0.2, and ECB, P/N 4500003F, with software version 3.2. These APUs are installed on but not limited to Airbus Industrie A319, A320, and A321 series aircraft.

Note 1: This airworthiness directive (AD) applies to each APU 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 APUs 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 an APU fire due to ECB malfunction, which could result in damage to the aircraft, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish either of the following in accordance with APIC Service Bulletin (SB) No. 4500001-49-52, dated October 11, 1996:

(1) Replace the existing ECB On Board Replaceable Module (OBRM) incorporating the originally approved software versions 2.0.2 or 3.2 with an ECB OBRM incorporating new software version 4.1; or

(2) Install an OBRM in the ECB that is programmed to software version 4.1.

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

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following APIC SB:

Document No.	Pages	Revision	Date
4500001-49-52	1-6	Original	Oct. 1, 1996.

Total pages: 6.

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 APIC, 4450 Ruffin Rd., P.O. Box 85757, San Diego, CA 92193-9090; telephone (619) 627-6501, fax (619) 627-6502. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 6, 1997.

Issued in Burlington, Massachusetts, on January 23, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97-4014 Filed 2-14-97; 9:54 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 96-AGL-26]

Modification of Class E Airspace; Pinckneyville, IL, Pinckneyville-Du Quoin Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Pinckneyville, IL. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for Pinckneyville-Du Quoin Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument

conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Pinckneyville, IL (61 FR 65994). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Pinckneyville, IL to accommodate aircraft executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at Pinckneyville-Du Quoin Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL IL E5 Pinckneyville, IL [Revised]

Pinckneyville-Du Quoin Airport, IL
(lat. 37°58'40" N, long. 89°21'38" W)
Pinckneyville NDB
(lat. 37°58'30" N long. 89°21'47" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Pinckneyville-Du Quoin Airport and within 2.6 miles each side of the Pinckneyville NDB 002° bearing extending from the 6.4-mile radius to 7.4 miles north of the airport, excluding that airspace within the Marion/Williamson Regional Airport, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-4074 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-25]

Modification of Class E Airspace; Big Rapids, MI, Roben-Hood Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Big Rapids, MI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 27 has been developed for Roben-Hood Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Big Rapids, MI (61 FR 65995). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) modifies Class E airspace at Big Rapids, MI to accommodate aircraft executing the GPS Runway 27 SIAP at Roben-Hood Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL MI E5 Big Rapids, MI [Revised]

Roben-Hood Airport, MI

(lat. 43°43′21″ N, long 85°30′15″ W)

White Cloud VORTAC

(lat. 43°34′30″ N, long. 85°42′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile

radius of Roben-Hood Airport, and within 4.4 miles each side of the White Cloud VOR 048° radial extending from the 6.7-mile radius to the VOR, and within 2.0 miles each side of the 095° bearing from the airport extending from the 6.7-mile radius to 9.4 miles east of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4075 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–AGL–23]

Establishment of Class E Airspace; Rolla, ND, Rolla Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Rolla, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 16, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Rolla, ND (61 FR 65994). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Rolla, ND to accommodate aircraft executing the GPS Runway 32 SIAP at Rolla Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace

Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL ND E5 Rolla, ND [New]

Rolla Municipal Airport, ND

(lat. 48°53'04" N, long. 99°37'13" W)

Devils Lake VOR/DME

(lat. 48°06'48" N, long. 98°54'29" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Rolla Municipal Airport, excluding that airspace north of lat. 49°00'00" N, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 49°00'00" N, on the east by long 99°00'00" W, on the southeast by the 22-mile arc of the Devils Lake VOR/DME, on the south by V-430, on the southwest by the Rugby Class E airspace, and on the west by long. 99°49'00" W.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-4072 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-20]

Establishment of Class E Airspace; Carrington, ND, Carrington Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Carrington, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Carrington, ND (61 FR 60657). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E. airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Carrington, ND to accommodate aircraft executing the GPS Runway 31 SIAP at Carrington Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL ND E5 Carrington, ND [New]

Carrington Municipal Airport, ND

(lat. 47°27'03" N, long. 99°09'09" W)

Devils Lake VOR/DME

(lat. 48°06'48" N, long. 98°54'29" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Carrington Municipal Airport and that airspace extending upward from 1,200 feet above the surface bounded on the north by the 22-mile arc south of the Devils Lake VOR/DME, on the east by V-170, on the south by V-55, on the west by Long. 99°30'00" W, and on the northwest by V-169.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-4071 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-22]

Establishment of Class E Airspace; New Lisbon, WI, Mauston-New Lisbon Union Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at New Lisbon, WI. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 32 has been developed for Mauston-New Lisbon Union Airport.

Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operational Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at New Lisbon (61 FR 60655). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at New Lisbon, WI to accommodate aircraft executing the GPS Runway 32 SIAP at Mauston-New Lisbon Union Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL WI E5 New Lisbon, WI [New]

Mauston-New Lisbon Union Airport
(lat. 43°50'17" N, long. 90°08'13" W)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of Mauston-New Lisbon Union Airport, excluding that airspace which overlies the Necedah, WI, Class E airspace and the Camp Douglas, WI, Class D and E airspace areas, during the specific dated and times class D airspace is effective.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97-4070 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-AGL-21]

Modification of Class E Airspace; Monticello, IN, White County Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Monticello, IN. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 18 and a GPS SIAP to Runway 36 have been developed for White County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Monticello, IN (61 FR 60656). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) modifies Class E airspace at Monticello, IN to accommodate aircraft executing the GPS Runway 18 SIAP and the GPS Runway 36 SIAP at White County Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL IN E5 Monticello, IN [Revised]

White County Airport, IN

(Lat. 40°42'32" N, long. 86°46'00" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of White County Airport and within

2.7 miles each side of the 185° bearing from the airport extending from the 6.4-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4069 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 96–AGL–16]

RIN 2120–AA66

Amendment to Time of Designation for Restricted Area R–4305, Lake Superior, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the time of designation for Restricted Area 4305 (R–4305), Lake Superior, MN, by reducing the requirement for the issuance of a Notice to Airmen (NOTAM) from 12 hours in advance to 4 hours in advance of activation of the airspace. The U.S. Air Force requested this amendment to permit greater flexibility in scheduling R–4305.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Steve Brown, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 5, 1996, the FAA proposed to amend Title 14 of the Code of Federal Regulations part 73 (14 CFR part 73) to amend the time of designation for R–4305 from the current “Intermittent by NOTAM, 12 hours in advance,” to “Intermittent by NOTAM, 2 hours in advance.” (61 FR 56927). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the FAA determined that 2 hours advance notice did not allow enough time for the NOTAM to be processed and still have adequate lead time for airspace users to become aware of the activation prior to their flights. Therefore, the time of designation will now read: “Intermittent by NOTAM, 4 hours in advance.” The

FAA’s Great Lakes Region coordinated this change with the regional U.S. Air Force representative and, on January 27, 1997, the U.S. Air Force formally accepted the modification to their proposal. Except for editorial changes and the time of designation change from “Intermittent by NOTAM, 2 hours in advance” to “Intermittent by NOTAM, 4 hours in advance,” this amendment is the same as that proposed in the notice. Section 73.43 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8D dated July 11, 1996.

The Rule

This amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) amends the time of designation for R–4305 from the current “Intermittent by NOTAM, 12 hours in advance,” to “Intermittent by NOTAM, 4 hours in advance.” The current 12-hour in advance NOTAM requirement does not permit the using agency sufficient flexibility to efficiently accomplish its mission in the event of maintenance or weather delays, or other operational factors. This action will not alter the existing boundaries, altitudes, or designated purpose of R–4305.

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

Environmental Review

This action will not affect the existing boundaries, altitudes, or activities conducted in R–4305. There will be no change from current operations and no new air traffic procedures will be necessary as a result of this rule. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, “Policies and Procedures for Considering Environmental Impacts.”

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

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

§ 73.43 [Amended]**R-4305 Lake Superior, MN [Amended]**

By removing “Time of Designation. Intermittent by NOTAM, 12 hours in advance,” and substituting “Time of designation. Intermittent by NOTAM, 4 hours in advance.”

Issued in Washington, DC, on February 7, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

[FR Doc. 97–4068 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of Inspector General****42 CFR Part 1008**

RIN 0991–AA85

Medicare and State Health Care Programs: Fraud and Abuse; Issuance of Advisory Opinions by the OIG

AGENCY: Office of Inspector General (OIG), HHS

ACTION: Interim final rule with comment period.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996, this final rule establishes a new part 1008 in 42 CFR chapter V to address the new OIG advisory opinion process. Specifically, these regulations set forth the specific procedures by which the Office of Inspector General, in consultation with the Department of Justice, will issue advisory opinions to outside parties regarding the interpretation and applicability of certain statutes relating to the Medicare and State health care programs.

DATES: Effective Date: This rule is effective on February 21, 1997.

Comment Period: To assure consideration, public comments must be

delivered to the first address provided under **ADDRESSES** by no later than 5 p.m. on April 21, 1997. Comments will be available for public inspection March 5, 1997 at the second address provided under **ADDRESSES** on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619–0089.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–10–IFC, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–10–IFC.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:**I. Background****A. The Medicare Anti-Kickback Statute**

Section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Medicare or State health care programs. The offense is classified as a felony, and is punishable by fines of up to \$25,000 and imprisonment for up to 5 years.

This provision is quite broad. The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the purchasing, leasing, ordering, or arranging for any good, facility, service, or item paid for by Medicare or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution.

B. Safe Harbors and Fraud Alerts

As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, specifically required the development and promulgation of regulations, the so-called “safe harbor” provisions, designed to specify various

payment and business practices which, although potentially capable of inducing referrals of business under the Medicare and State health care programs, would not be treated as criminal offenses under the anti-kickback statute (section 1128B(b) of the Social Security Act; 42 U.S.C. 1320b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Social Security Act; 42 U.S.C. 1320a–7(b)(7).

The OIG safe harbor provisions have been developed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority. The 13 final safe harbor provisions, which specify practices which are expressly made legal, are codified at 42 CFR 1001.952.

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. Eight individual Special Fraud Alerts were published in the Federal Register on December 19, 1994 (59 FR 65372), August 10, 1995 (60 FR 40847) and June 17, 1996 (61 FR 30623). Thus, for many years the OIG has been publishing substantial guidance indicating what practices are lawful and what practices the OIG considers unlawful under the anti-kickback statute.

C. Advisory Opinions: Section 205 of Public Law 104–191

The Health Insurance Portability and Accountability Act of 1996, Public Law 104–191, effective August 21, 1996, now requires the Department to provide additional formal guidance regarding the application of the anti-kickback statute and the safe harbor provisions, as well as other OIG health care fraud and abuse sanctions. Among the provisions set forth in section 205 of Public Law 104–191 is the requirement that the Department, in consultation with the Department of Justice (DoJ), issue written advisory opinions to particular parties with regard to: (1) What constitutes prohibited remuneration under the anti-kickback statute; (2) whether an arrangement or proposed arrangement satisfies the criteria in section 1128B(b)(3) of the Social Security Act, or established by regulation, for activities which do not result in prohibited remuneration; (3) what constitutes an inducement to

reduce or limit services under section 1128A(b) of the Act to Medicare or Medicaid program beneficiaries¹; and (4) whether an activity or proposed activity constitutes grounds for the imposition of civil or criminal sanctions under sections 1128, 1128A or 1128B of the Act. Thus, advisory opinions will be issued with regard to the provisions authorizing the Department to exclude individuals and entities from participation in Medicare and the State health care programs. Section 1128 of the Act authorizes exclusion in a wide variety of circumstances, for example, conviction of health care related offenses, State licensure action, and submission of claims in excess of usual charges or for services which fail to meet professionally recognized standards of health care. Similarly, the civil money penalty provisions of section 1128A of the Act authorize penalties and exclusion for a variety of acts, for example, presentation of a Medicare or Medicaid claim that is false or fraudulent, and hospital payments to physicians to induce the physician to reduce or limit care to any Medicare or Medicaid beneficiary under the physician's direct care. The Department will also provide advisory opinions regarding the criminal provisions of section 1128B of the Act which includes the anti-kickback statute.

(On December 31, 1996, the OIG, in accordance with section 205 of HIPAA, published a notice in the Federal Register (61 FR 69060) that solicited proposals and recommendations for developing new and modifying existing safe harbor provisions under the Medicare and State health care programs' anti-kickback statute, as well as for developing new OIG Special Fraud Alerts. We specifically indicated in that notice our intention of publishing separate rulemaking addressing the procedures and process for accepting and issuing advisory opinions and soliciting public comments and recommendations in this area.)

In accordance with the statute, requests for advisory opinions must be accepted for agency review on or after February 21, 1997. While the President's fiscal year 1998 budget submission proposes a repeal of section 205, the OIG and the Department are proceeding to implement these statutory obligations in accordance with existing law.

D. Waiver of Proposed Rulemaking

In developing and publishing these regulations as an interim final rule, the Secretary has determined that for good cause it is both impracticable and contrary to public interest to first issue these regulations in proposed rulemaking form. We believe that the statutory requirement that final regulations addressing the advisory opinion process be in effect no later than February 17, 1997, makes it impracticable to develop such procedures with the necessary inter-governmental collaboration and initial public comment usually required in such rulemaking by the statutory deadline.

In addition, we believe that it is imperative that we have in place specific procedures by February 21, 1997, to address the receipt and processing of advisory opinion requests. It would be against the public interest to proceed to receive and process advisory opinions without setting forth procedural guidance. However, we believe that the 60-day period for public comments being set forth in this interim final rule will serve to protect the public's interest in this rulemaking process by allowing for an opportunity for additional input and recommendations, without unduly delaying the intent of these regulations. We will respond to all appropriate and relevant public comments received during the 60-day comment period, and make any necessary revisions to these regulations through a revised final rule to be issued, if possible, within 9 months of the close of the comment period. Accordingly, we believe this interim final rule approach will achieve the dual purpose of issuing a rulemaking consistent with statutory time frames while soliciting and benefiting from the public comment process.

II. Provisions of the Interim Final Rule *Anti-kickback Statute Advisory* *Opinions: "Case specific" Safe Harbors*

These interim final regulations establish a new 42 CFR part 1008 that is designed to establish procedures for advisory opinions that will provide the public with meaningful advice regarding the anti-kickback and other OIG sanction statutes regarding specific factual situations. With respect to the anti-kickback statute, these procedures contemplate particularized or "case specific" safe harbors. In establishing the regulatory safe harbors in § 1001.952, the OIG first considered the full scope of factual circumstances potentially subject to the anti-kickback statute, that

is, generally all types of arrangements that could potentially involve an intentional payment of remuneration to induce the referral of Medicare business. Next, we proceeded to "limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial or innocuous arrangements." (56 FR 35952, July 29, 1991). Thus we sought to specify particular safe harbors that, despite the potentially unlawful intent, would protect non-abusive relationships. To accomplish this objective, each safe harbor contains limitations and controls that provide adequate assurance that the programs will not be abused. The actual intent of the parties is entirely irrelevant to this analysis. The OIG has designed 13 final safe harbors that describe practices that are sheltered from liability, even though unlawful intent may be present, and is continuing to finalize 8 additional safe harbor provisions.

The OIG views the advisory opinion process with a means of analysis similar to the safe harbor provisions, with one major exception. Where the safe harbors describe generalized, hypothetical arrangements which are protected, we view an advisory opinion as a means of relating the anti-kickback statute to the particular facts of a specific arrangement. There are likely to be factors that make some specific arrangements appropriate for a favorable advisory opinion, even in subject matter areas where a generalized safe harbor may be impractical. Thus, we believe that particularized or "case specific" safe harbor treatment is appropriate where the specific arrangement contains limitations, requirements or controls that give adequate assurance that Federal health care programs can not be abused.

These regulations are designed to avoid the potential pitfalls of advisory opinions on intent-based statutes, such as the anti-kickback statute. First, it is not practical for the agency to make an independent determination of the subjective intent of the parties based only upon written materials submitted by the requestor. While requestors are required to submit a complete written description of the transaction, along with copies of the documents that establish the arrangements in question, these materials do not afford a satisfactory basis upon which to make a reliable determination of subjective intent. In anti-kickback cases, the intent issue is whether one purpose of the remuneration in question is intended to induce the referral of Federal program business. In anti-kickback cases under investigation, the determination of this

¹ Public Law 104-191 cited this provision as section 1128B(b) of the Act. We believe the correct reference is section 1128A(b).

issue requires substantial independent investigation of all facts and circumstances surrounding the transaction, usually including extensive interviews. It is most unlikely that written materials prepared by the requestor could encompass all the information necessary to enable the OIG to make a reliable determination of the subjective intent of the parties.

The second potential pitfall is that advisory opinions are capable of being misused by persons *not* a party to the transaction in question in order to inappropriately escape liability. While the safe harbors are intended to create exemptions that apply generally, advisory opinions are intended to address the facts of a particular arrangement. A third party may implement an arrangement that appears similar to the arrangement described in the advisory opinion, but the third party may introduce additional factors that may make a difference in the outcome of an advisory opinion. Thus, advisory opinions are binding upon and may legally be relied upon only by the requestor(s).

We believe that these regulations provide for meaningful guidance to the public on the statutes for which advisory opinions are authorized, while avoiding the potential pitfalls described above.

As set forth, these interim final regulations have been developed primarily to address: (1) The procedures to be followed by a party applying for advisory opinions; (2) the procedures to be followed by the OIG in responding to these requests; (3) the time frames under which the OIG will receive and respond to requests for advisory opinions; (4) the type and amount of fees to be charged to the party requesting an advisory opinion; and (5) the manner in which the general public will be informed of the issuance of any advisory opinions by the OIG.

These regulations do not address the substance or the content of advisory opinions by the OIG.

Responsibilities of Outside Parties Seeking Advisory Opinions

Any individual or entity may submit a request for an advisory opinion. However, since we anticipate that most requests will apply to health care business arrangements, for purposes of this discussion, we will generally use the term "arrangement" to refer to the factual circumstances under which an advisory opinion is requested, even though we realize that some requests will involve facts that are not related to a business arrangement.

As indicated above, the advisory opinion process is designed to provide authoritative guidance to participants in particular arrangements. Therefore, the regulations indicate that the arrangement in question must either be in existence at the time of the request for an advisory opinion, or with respect to prospective arrangements, there must be a good faith intention to enter into the described arrangement in the near future. (With respect to prospective conduct, we are stating that the requestor can declare the intention to enter into the arrangement contingent on the receipt of a favorable advisory opinion.)

We do not believe that it is appropriate to provide advisory opinions to persons not involved in the arrangement in question. For example, we believe that a description of a competitor's arrangement is not the proper subject of an OIG advisory opinion since the participants to the particular transaction would not be involved in the request. A party to an actual arrangement—either existing or about to be entered into—is in a position to provide full and complete information regarding the facts in question. By contrast, third parties are not in a position to provide a reliable statement as to the facts of a particular arrangement in which the third party is not a participant. In addition, it is unclear who would be bound by an advisory opinion on an arrangement not involving the requestor.

Similarly, we do not believe it is appropriate to provide advisory opinions on hypothetical or generalized arrangements for several reasons. First, the anti-kickback statute and the other OIG sanction statutes impose liability with respect to acts by specific people in particular factual circumstances, i.e., the context in which prosecutive decisions are made. Anti-kickback cases are almost never alike in all material respects. In addition, especially with intent-based statutes like the anti-kickback statute, it is often not possible to determine that a particular general practice is invariably good or bad. An arrangement may be legal under the anti-kickback statute with respect to one party, but not with respect to a second party. Such differing results can be a function of the different intentions of the two parties, or a function of the introduction by a party of additional factors that would make a material difference in the resulting opinion. We believe it would not be possible for an advisory opinion reliably to identify all the possible hypothetical factors that might lead to different results.

Moreover, the OIG already has in place a process for offering guidance on the application of the OIG's legal authorities to hypothetical or generalized factual circumstances—the safe harbor provisions and Special Fraud Alerts. As indicated above, the OIG has promulgated 13 final safe harbor provisions in § 1001.952, and has proposed several others specifying generalized payment practices that will not be subject to sanction under the Medicare and Medicaid anti-kickback statute. Members of the public may also now under section 1128D(a) of the Act submit proposals for additional safe harbor regulations to the OIG. Further, in accordance with section 1128D(c) of the Act, if a member of the public is aware of a practice that may be suspect or of particular concern under Medicare or a State health care program, they may request the OIG to issue a Special Fraud Alert regarding the practice.

Requestors who are not individuals are required to disclose certain ownership and control information, so that the appropriate checks can be made to ensure that the matter which is the subject of the advisory opinion request is not under current investigation.

Initiating the Process for an Advisory Opinion

To initiate the advisory opinion process, we are indicating in part 1008 that the requestor must submit a written request for an advisory opinion. The request must clearly and thoroughly present a complete description of the facts for which an advisory opinion is being requested. To the extent that the subject matter of the request is the requestor's potential liability under one sanction authority, we believe the request should provide a complete description of the facts addressing the elements of that authority. Under these interim final regulations, if the request asks the OIG to advise on whether an arrangement is subject to sanction under more than one legal authority, we believe the submission should include a complete description of the facts regarding the different sanction authorities in those statutes. To the extent that the necessary information is provided in a clear and orderly manner, the OIG will be better able to process the request.

The regulations are requiring any submission to include copies of all relevant documents, such as contracts, leases, employment agreements and court documents, as well as descriptions of any other understandings that may affect the documents. In addition, the submission should include a narrative description of the arrangement. As

indicated in § 1008.36, in making the request, the identities (including names and addresses) of the requestor and all other actual and potential parties, to the extent known to the requestor to the arrangement that is the subject of the request to the advisory opinion must be included. In addition, the requestor must identify a designated contact person who will be available to communicate with the OIG.

We are requesting comments on the certification process being adopted. Under these regulations at this point we are requiring two certifications to be made in a request for an advisory opinion. The certifications must be signed by the individual (if an individual requestor), the Chief Executive Officer, or comparable officer of the company (if a corporate requestor), or the managing partner (if a partnership is the requestor). The responsible individual must certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of the knowledge of the requestor. Where the request relates to prospective conduct, the regulations state that the request must also include a certification that the requestor intends in good faith to enter into the arrangement described in the request. This certification may be made contingent upon receipt of a favorable advisory opinion.

Under these interim final regulations, while all submissions should include the above information, because of the wide variety of activities upon which the OIG must issue advisory opinions, we cannot detail at this point all of the information a requestor must provide. We are requesting public comment and input on the type of information to be provided by the requesting party and will address this point further in any revised final rulemaking. In the interim, prior to submitting a request for an advisory opinion, the requestor is advised to contact the OIG to inquire about the information needed by the OIG to process a request of the type the requestor intends to submit. Inquiries should be made in writing and sent to the Office of Inspector General, Office of Counsel to the Inspector General, Industry Guidance Branch, Room 5246 Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. (Any changes to this address regarding inquiries will be posted on the OIG home page at <http://www.sba.gov/ignet/internal/hhs/hhs.html>.) The OIG may, depending on the subject matter of the inquiry, provide the requestor with preliminary questions designated to elicit the factual information necessary

to facilitate an OIG response to the request. These questions should be (but are not required to be) answered in the request for an advisory opinion.

If the information needed by the OIG is in the preliminary submission, we will be better able to render a prompt, concise and appropriate advisory opinion. We welcome comments on this approach.

Fees Charged to Requesting Parties

Section 1128D(b)(5)(B)(ii) of the Act requires that requestors be charged a fee equal to the costs incurred by the Department in responding to the request. The fee must be paid into the general fund of the U.S. Treasury.

Section 1008.31 of these regulations indicates that the actual costs of responding to requests for advisory opinions will factor in the salary, benefits and overhead costs of attorneys and others who will work on analyzing requests and writing advisory opinions from requesting parties. In light of the breadth of subject matter and possible range of complexities for advisory opinion requests, we do not believe it is possible to calculate or accurately estimate the actual cost of providing an advisory opinion in advance. Indeed, we believe that the statute requires us to calculate the actual costs incurred during the processing of a specific request and charge the requestor for that amount. As set forth in these regulations, at the conclusion of the advisory opinion process, when either the opinion has been issued or the request has been withdrawn, the requestor is responsible for paying the U.S. Treasury an amount equal to the costs incurred by the Government in responding to the request.

Although we cannot reliably project the processing costs in advance, we can make broad estimates that may be of use to prospective requestors. We estimate that the actual cost of processing requests, including salaries, benefits and overhead, will be near \$100 per hour. We must include the time of staff attorneys, supervisors and support staff, as well as others who are consulted on various issues. The processing time will vary according to the complexity of the request and the quality of the submission. Simple requests, for example, regarding whether a certain court action is a conviction for the purposes of exclusion in accordance with section 1128 of the Act may take approximately 3 hours to analyze and produce a written opinion. On the other hand, requests involving the application of the anti-kickback statute to large, multiple party, intricate business deals may take in excess of 40 hours or more

to fully analyze and produce a written advisory opinion.

We believe that it is reasonable to expect that requests for an advisory opinion will cost at least \$250 in initial processing. Every request for an advisory opinion will take time to read and analyze for the OIG to ensure that it has an accurate understanding of all material facts submitted. Following that initial analysis, the OIG is required to consult with the DoJ and write the actual advisory opinion. By its very nature, most of this work will need to be done by the OIG staff attorneys. Accordingly, the regulations are providing for a non-refundable payment of \$250 that is to accompany the request for an advisory opinion. Once we have gained experience in the time and staff resources involved in this process, a clearer estimate may need to be made and a re-calculation set forth.

Because we do not believe that we can accurately estimate our costs in advance for a particular request, we are attempting to accommodate requestors who may want to limit the costs of receiving an advisory opinion. The regulations provide that a requestor may designate a "triggering dollar amount" in their request for an advisory opinion. If the OIG calculates that the cost of processing the request has reached, or is likely to exceed, that triggering amount, the OIG will stop processing the request and promptly notify the requestor. The requestor may then decide to either authorize continued processing or withdraw the request for an advisory opinion. While the OIG intends to be able to more accurately reflect such costs in advance as experience is gained, this triggering mechanism approach should ensure that requestors do not pay costs far in excess of what they expect to incur by their request.

Section 1008.39 of the regulations specifically indicates that while a requestor may withdraw a request for an advisory opinion at any time, he or she will be responsible for any costs incurred in processing the request prior to its withdrawal.

When the advisory opinion has been completed as discussed below, or the request has been withdrawn, the OIG will calculate the total costs incurred in processing the request after taking into account any previous payments, such as the initial \$250 fee, associated with the request, and the OIG will then notify the requestor of the amount owed. Once the requestor has paid the full amount owed for the cost of processing the request as required by statute, the OIG will release the advisory opinion to the requestor.

While the OIG believes the above approach for payment and release will

be sufficient for the vast majority of requests for advisory opinions, an additional procedure will be necessary in those cases where the request requires expert advice on non-legal matters. The OIG is particularly concerned about requests for advisory opinions requiring review by medical experts. For example, section 1128(b)(6)(B) of the Act authorizes the OIG to exclude any individual or entity who has furnished services to patients "substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care." In order to determine whether a given factual scenario would form the basis for a sanction under this authority, as stated in § 1008.33 of these regulations, the OIG may make a determination that extensive medical as well as legal analysis is required, and that the medical analysis should be referred to a Peer Review Organization or other entity capable of providing and issuing medical reviews.

Because of the time and expense of such expert reviews, we believe that a request that requires such outside consultation should be treated differently from a standard request involving the application of the governing law to a given set of facts. When the OIG determines that an expert non-legal opinion is required, we will obtain an estimate for the costs of such an opinion and provide the requestor with that estimate. The requestor may then decide whether to pay the estimated cost of the expert review or withdraw the request. If the requestor pays the estimated cost, the OIG will promptly refer the matter to the expert for such review. Once the OIG receives the medical or other review from the outside expert, the advisory opinion process will continue with the OIG applying the expert evaluation to the legal question(s) at issue.

Responsibilities of the OIG in Reviewing the Advisory Opinion Requests

Subpart E of part 1008 discusses the obligations and responsibilities of the OIG in answering requests for advisory opinions. As set forth in these regulations, once the OIG receives a request for an advisory opinion, we will promptly examine it to determine if it appears to contain sufficient information to form the basis for an informed advisory opinion. Generally speaking, the request must contain responses to the preliminary questions posed by the OIG, as discussed above. If the request does not appear sufficient, we will promptly notify the requestor what additional information is required.

Conversely, if the request appears to be sufficient, we will accept the request. In all cases, we will either request additional information or accept the request within 10 working days after receiving the request. If we have requested additional information and the requestor resubmits the advisory opinion request, we will assess within 10 working days the resubmission to determine whether it can be accepted or whether we still need further information. At the point when the OIG accepts the request, we will notify the requestor by U.S. mail of the date of acceptance.

We believe that this approach allows the OIG a reasonable amount of time to identify requests that do not contain information sufficient for the OIG to process the request. While we are limiting the time period of this initial assessment to ensure that facially complete requests are promptly processed, we are soliciting public comment on the appropriateness of this method of screening requests for advisory opinions prior to their acceptance.

Notwithstanding the acceptance of a request, the OIG reserves the right to later determine that it needs additional information. If we decide such additional information is necessary, we will notify the requestor in the same manner as we did prior to acceptance. The time period between when we notify the requestor about the additional information we need and when we receive the requested information will not be counted in considering the time for issuance of an opinion.

Because of the fact-intensive inquiry that will be necessary to render most advisory opinions, the OIG anticipates that there may be a need to request additional information from many requestors. In responding, the requestor should provide the OIG with the necessary information and accompany that submission with a certification from the same individual (or one in the same position) who certified the original request for an advisory opinion.

As required by section 1128D(b)(5)(B) of the Act and set forth in § 1008.43, the OIG will issue an advisory opinion within 60 days after the request for the opinion is accepted. Once the OIG receives a request for an opinion that appears to meet the submission criteria, the request for an opinion will be promptly accepted and the 60-day time period for issuance of an opinion will commence. The OIG will send the advisory opinion to the requestor by regular U.S. mail at the conclusion of the 60-day time period and once all required fees have been paid.

We believe that under certain circumstances the running of the 60-day time limit for issuing an opinion should be tolled. The tolling periods will only reflect time when the OIG cannot work on analyzing the request. If the OIG notifies the requestor that the costs have reached, or are likely to exceed, the triggering amount designated by that requestor, the OIG will stop processing the request until the requestor instructs the OIG to continue. Similarly, if the OIG notifies a requestor of the need for, and estimated cost of, an outside expert opinion on a non-legal issue, the regulations state that the OIG will stop processing the request until the requestor pays the estimated cost and the outside expert provides its opinion. Likewise, in those instances when the OIG requests additional information from the requestor that the OIG believes is necessary to issue the advisory opinion, the OIG will stop processing the opinion until the additional information is provided. The time that elapses during these periods when the OIG is not processing the request will not be counted as part of the 60-day period.

The time period for issuing an advisory opinion does not include the time after the OIG notifies the requestor that the advisory opinion is completed and the requestor must pay the full balance due for the cost of the opinion.

While the OIG intends to issue advisory opinions within 60 days of the receipt of the request, we do not believe that the 60-day time period should include delays in the processing of the request that are not within the control of the OIG. With the exception of the delay while waiting for a needed outside expert opinion, all of the possible tolling events are under the exclusive control of the requestor, and as such, since for what we believe will be the vast majority of advisory opinion requests, the 60-day period will only be tolled for those periods during which the requestor has not paid a required fee or has not provided information necessary to the processing of the request.

As required by section 1128D(b)(1) of the Act, the OIG will consult with DoJ when responding to requests for advisory opinions, and will issue an advisory opinion to the requestor after considering the complete description of all facts provided to it by the requestor. The opinion will restate the material facts known to the OIG and discuss the OIG's analysis and conclusion regarding the legal question(s) to be applied to the facts presented.

Dissemination of Advisory Opinions

Section 1128D(b)(5)(A)(v) requires these regulations to describe the manner in which advisory opinions will be made available to the public. As set forth in subpart E of these regulations, once the OIG issues an advisory opinion to a requestor, the OIG will promptly make a copy of that opinion available for public inspection at the OIG headquarters and the DHHS/OIG web site. We also anticipate that advisory opinions will likely be made widely available to interested members of the public through commercial publishers and trade groups. Public comments and additional suggestions regarding the dissemination of advisory opinions to the public will be welcomed.

Documents submitted to the OIG related to requested advisory opinions, and internal government documents related to such opinions, will be available to the extent authorized by the Freedom of Information Act (FOIA) (5 U.S.C. 552). To the extent that a requestor provides information it believes is not subject to disclosure under FOIA, such as items that the requestor believes are trade secrets or privileged and confidential commercial or financial information, the requestor should identify such information in the manner described in 45 CFR 5.65 (c) and (d). The requestor's assertions about the nature of information, however, are not controlling.

In addition, although a document may be exempt from disclosure under FOIA, facts reflected on that document may become part of the advisory opinion that will be provided to the public. The material facts of the arrangement in question will be described in the body of each advisory opinion, all of which will be fully available to the public.

Rescission of an Advisory Opinion

Section 1008.45 of the regulations addresses the rescission of an advisory opinion by the OIG. The regulations reserve the right of the OIG to rescind an advisory opinion after its issuance in limited circumstances, such as when the OIG learns after the issuance of the opinion that the arrangement in question may lead to fraud and abuse. In such an instance, the OIG will notify the requestor of the rescission and make such notice available to the same extent as an advisory opinion. Unless the OIG establishes that the requestor failed to provide material information in its submissions to the OIG, the requestor would not be subject to OIG sanction for actions it took prior to the notice of rescission if the requestor acted in good faith reliance on the advisory opinion.

We are specifically soliciting comments on whether this approach reasonably balances the Government's need to ensure that advisory opinions are legally correct and the requestor's interest in finality.

Scope and Effect of Advisory Opinions

Subpart F of part 1008 of these regulations addresses the scope and effect of advisory opinions. An advisory opinion issued under this process is legally binding on the Department (including the OIG) and the requestor, but only with respect to the specific conduct of the particular requestor. In other words, in accordance with section 1128D(b)(4)(A) of the Act with respect to the issuance of advisory opinions, the Department is not legally bound with respect to the conduct of third parties, even if the conduct of that party appears similar to the requestor. We believe that no third parties are bound nor may they rely on an advisory opinion since each advisory opinion will apply legal standards to a set of facts involving certain known persons who provide specific statements about key factual issues. A third party may implement a look-alike arrangement with *additional* characteristics that would lead to an unfavorable opinion. Therefore, by their very nature, advisory opinions, unlike the safe harbor regulations, cannot be applied generally.

We believe the receipt of an advisory opinion regarding a certain arrangement does not totally prevent the Government from commencing an action against a party to the arrangement where, for example, a requestor failed to disclose a material fact. In any such action under sections 1128, 1128A or 1128B of the Act, an individual or entity who has requested and received an advisory opinion from the OIG regarding the arrangement in question may seek to introduce the advisory opinion into evidence in the proceeding. We believe that the court must then determine whether the requestor of the advisory opinion was justified in relying on the opinion. This determination must be made by examining all relevant circumstances, including whether the requestor fully and accurately described the arrangement in its submissions to the OIG.

III. Regulatory Impact Analysis

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this interim final rule in accordance with the provisions of Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available

regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety, distributive, and equity effects).

As indicated in section II of this preamble, this rule deals primarily with the procedural issues involved in the receipt, review and response to requests for advisory opinions by the OIG. It sets up the procedures as required by Public Law 104-191, for obtaining an advisory opinion on whether or not certain activities violate designated fraud and abuse authorities. This rule does not address the substance of the anti-kickback or other sanction statutes. It does not address the substance or content of advisory opinions which may be issued in the future. To the extent that advisory opinions affect the behavior of health care providers, that effect is the product of the substantive content of the sanction statutes themselves, and the substantive content of the advisory opinions which will be issued on a case-by-case basis in the future. The effect of advisory opinions on health care providers is not a function of the process for requesting an advisory opinion.

In addition, the extent to which advisory opinions will result in alteration of future business practices, if any, is impossible to analyze without experience. It would be completely speculative to try to divine to what degree business deals may or may not occur as a result of the substance of advisory opinions issued in the future.

Moreover, we have no way of knowing in advance what the volume of requests for advisory opinions will be. However, we estimate that we will receive approximately 500 requests per year that will generally require between 3 and 40 hours each to process. Accordingly, it would likely cost in the range of \$150,000 to \$2,000,000 per year to issue advisory opinions.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), if a rule has a significant economic effect on a substantial number of small businesses the Secretary must specifically consider the effects of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. As stated above, this rule does not address the substance of the fraud and abuse statutes or the substance of advisory opinions which may be issued in the future. It describes the *process* by which an individual or entity may receive an opinion as to the application of these statutes to particular business

practices. The aggregate economic impact of this rulemaking on small business entities should, therefore, be minimal.

There will, however, be costs involved in filing requests for opinions by OIG. Those costs will vary depending on the complexity of the request. Compared to the costs of seeking private legal advice, it would appear that fees charged for the OIG's review would not be substantial. Furthermore, the requirement that applicants pay cost-based fees for advisory opinions is not a product of this rulemaking: It is prescribed by statute that such fees be paid by those requesting advisory opinions. This rule merely lays out the procedures for such costs to be paid. Thus, we have concluded, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

IV. Paperwork Reduction Act

In order to provide appropriate advisory opinions, the OIG will need certain information from the parties who request advisory opinions. Sections 1008.18, 1008.36(b) and 1008.37 through 1008.40 of this interim final rule contain information collection requirements that require approval by OMB. We are required to solicit public comments under section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. Specifically, comments are invited on (1) 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) the accuracy of the estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) 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.

We are seeking emergency OMB approval for the collection of information contained in this rule. In a separate Federal Register notice, containing a 60-day public comment period, we will solicit public comment on these requirements, thereby initiating the normal Paperwork Reduction Act clearance.

Title: OIG Advisory Opinion Procedure.

Summary of the collection of information: Section 205 of Public Law 104-191 requires the Department to

provide advisory opinions to the public regarding several categories of subject matter. The Department must opine on requestor's potential liability under sections 1128, 1128A, and 1128B of the Act. These regulations provide the procedures under which members of the public may request advisory opinions from the OIG. Because all requests for advisory opinions are purely voluntary, respondents will only be required to provide information regarding facts about which they have decided to request an opinion from the OIG.

In order to ensure a useful advisory opinion process, the OIG must receive information sufficient to determine whether the arrangement in question is subject to sanction. The information provided by the requestor will be applied by the OIG to the legal question posed in the request for an advisory opinion. In general, we are requiring a complete description of all facts relevant to the inquiry, including all related documents.

The general requirements in this rulemaking may be supplemented by voluntary preliminary questions we have developed that correspond with each sanction authority in sections 1128, 1128A, and 1128B of the Act as appropriate. These more specific information collection requirements are being made available for public review and comment by a separate Federal Register notice. The preliminary questions will be designed to elicit the specific information that will enable the OIG to provide the most accurate and timely opinion possible. For example, if a request is made for an advisory opinion on whether a given arrangement will violate the anti-kickback statute, one question may relate specifically to how much remuneration is paid to various parties to the arrangement. Although requestors will be under no obligation to answer the preliminary questions, we believe that the questions will provide requestors with valuable guidance about what information we will need to answer their inquiry. A request for an advisory opinion that includes complete answers to the preliminary questions corresponding to the issue(s) raised by the requestor should contain most, if not all, of the information that we will require to issue an advisory opinion. Even though we believe that the questions will aid requestors, the answering of these questions is purely voluntary in nature and we will process advisory opinion requests regardless of whether the preliminary questions are answered.

The following discussion relates the aggregate effect of the collections of information included in the text of this

interim final rule and in the preliminary questions.

Respondents: The "respondents" for the collection of information described in these regulations will be self-selected individuals and entities that choose to submit requests for advisory opinions to the OIG. We anticipate that the respondents will include health care providers of many types, from sole practitioner physicians to large diversified publicly-traded corporations.

Estimated number of respondents: 500. Most individuals and entities that provide medical services that may be paid for by Medicare, Medicaid or Federal health care programs could potentially have questions regarding one of the subject matters about which the OIG will issue advisory opinions. In reality, we believe that the number of requestors will be a small fraction of such providers.

Over the past several years, the Inspector General Division of the Office of the General Counsel has answered telephone inquiries from individuals and entities seeking *informal* guidance with respect to the Medicare and State health care programs' anti-kickback statute and other sanction authorities. Many of the inquiries related to authorities outside the scope of the advisory opinion process, that is, the self-referral provisions of section 1877 of the Act. Furthermore, we believe that most of the inquiries have been of a nature that the caller would be unlikely to request a written advisory opinion on the subject matter. Many inquiries related to relatively simple matters that could be researched by private counsel at relatively minor expense. Nevertheless, the rate of these telephone inquiries may form a starting point for estimating the number of advisory opinion requests. We estimate that we received an average of 6 telephone inquiries per day over the past several years. Of these, we believe that an average of two per day could potentially have been the subject of an advisory opinion. Using that history as a rough guide, we estimate an annual number of 500 requests. Obviously, the actual number of requests could be larger since, for the first time, formal written opinions are available. Conversely, the numbers could be smaller for a combination of many unquantifiable reasons, such as the desire not to subject an arrangement to official scrutiny.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: We believe that the burden of preparing requests for advisory opinions will vary widely because of differences in size and complexity of the

business transaction in question. We estimate that the average burden for each submitted request for an advisory opinion will be in the range of 2 to 40 hours. We further believe that the burden for most requests will be closer to the lower end of the range, with an average burden of 10 hours per respondent. Total burden for this proposed information collection is estimated to be 5000 hours.

We are requiring requests for advisory opinions to involve existing conduct, or conduct in which the requestor intends to engage. We anticipate that most requests will involve business arrangements into which the requesting party intends to enter. Because the facts will relate to business plans, the requesting party will have collected and analyzed all or almost all of the information we will need to collect to review the request. Therefore, in order to request an advisory opinion, the requestor will most likely simply need to compile already collected information for our examination. In some cases, however, the requestor may need to expend a more significant amount of time in preparing a submission related to a complex arrangement involving a large number of parties.

In addition to the hour burden discussed above, some respondents may incur additional costs related to the purchase of outside professional services, such as attorneys or consultants. We believe that the cost burden related to such outside assistance will vary from zero to 40 hours per submission. The outside assistance cost burden estimate is based on an estimate of 10 hours per request at \$200 per hour. Thus, the cost burden for these outside functions is estimated at \$1,000,000.

Comments on this information collection should be sent to both:

Cynthia Agens Bauer, OS Reports Clearance Officer, ASMB Budget Office, Room 503-H, Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, FAX: (202) 690-6352

Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20053, FAX: (202) 395-6974.

Comments on these paperwork reduction requirements may be submitted to the above-cited individuals within two days following the Federal Register publication of this interim final rule.

List of Subjects in 42 CFR Part 1008

Administrative practice and procedures, Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Medicare, Penalties.

Accordingly, 42 CFR chapter V, subchapter B is amended by adding a new part 1008 as set forth below:

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 1008—ADVISORY OPINIONS BY THE OIG

Subpart A—General Provisions

Sec.

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Subpart B—Preliminary Obligations and Responsibilities of the Requesting Party

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Subpart F—Scope and Effect of OIG Advisory Opinions

1008.51 Exclusivity of OIG advisory opinions.

1008.53 Affected parties.

1008.55 Admissibility of evidence.

1008.59 Range of the advisory opinion.

Authority: 42 U.S.C. 1320a-7d(b).

Subpart A—General Provisions

§ 1008.1 Basis and purpose.

(a) This part contains the specific procedures for the submission of requests by an individual or entity for advisory opinions to, and the issuance of advisory opinions by, the OIG, in consultation with the Department of Justice (DoJ), in accordance with section

1128D(b) of the Social Security Act (Act), 42 U.S.C. 1320a-7d(b). The OIG will issue such advisory opinions based on actual or proposed factual circumstances submitted by the requesting individual or entity.

(b) An individual or entity may request an advisory opinion from the OIG regarding on any of 5 specific subject matters described in § 1008.5 of this part.

(c) The requesting party must provide a complete description of the facts as set forth in subpart B of this part, and pay the costs to the OIG of processing the request for an advisory opinion as set forth in subpart C of this part.

(d) Nothing in this part limits the investigatory or prosecutorial authority of the OIG, DoJ or any other agency of the Government.

§ 1008.3 Effective period.

The provisions in this part are applicable to requests for advisory opinions submitted on or after February 21, 1997, and before August 21, 2000, and to any requests submitted during any other time period for which the OIG is required by law to issue advisory opinions.

§ 1008.5 Matters subject to advisory opinions.

(a) An individual or entity may request an advisory opinion from the OIG regarding—

(1) What constitutes prohibited remuneration within the meaning of section 1128B(b) of the Act;

(2) Whether an arrangement, or proposed arrangement, satisfies the criteria set forth in section 1128B(b)(3) of the Act for activities that do not result in prohibited remuneration;

(3) Whether an arrangement, or proposed arrangement, satisfies the criteria set forth in § 1001.952 of this chapter for activities that do not result in prohibited remuneration;

(4) What constitutes an inducement to reduce or limit services under section 1128A(b) of the Act to Medicare or Medicaid program beneficiaries; and

(5) Whether any activity, or proposed activity, constitutes grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act.

(b) *Exceptions.* The OIG will not address through the advisory opinion process—

(1) What the fair market value will be, or what the fair market value was paid or received, for any goods, services or property; and

(2) Whether an individual is a bona fide employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

Subpart B—Preliminary Obligations and Responsibilities of the Requesting Party

§ 1008.11 Who may submit a request.

Any individual or entity may submit a request to the OIG for an advisory opinion regarding an existing arrangement or one which the requestor in good faith specifically plans to undertake. The requestor must be a party to the arrangement, or proposed arrangement, that is the subject of the request.

§ 1008.15 Facts subject to advisory opinions.

(a) The OIG will consider requests from a requesting party for advisory opinions regarding the application of specific facts to the subject matters set forth in § 1008.5(a) of this part. The facts must relate to an existing arrangement, or one which the requestor in good faith plans to undertake. The plans may be contingent upon receiving a favorable advisory opinion. The advisory opinion request should contain a complete description of the arrangement that the requestor is undertaking, or plans to undertake.

(b) Requests presenting a general question of interpretation, posing a hypothetical situation, or regarding the activities of third parties do not qualify as advisory opinion requests.

(c) An advisory opinion request will not be accepted when—

(1) The request is not related to a named individual or entity;

(2) The same, or substantially the same, course of action is under investigation, or is or has been the subject of a proceeding involving the Department of Health and Human Services or another governmental agency; or

(3) An informed opinion cannot be made, or could be made only after extensive investigation, clinical study, testing or collateral inquiry.

§ 1008.18 Preliminary questions suggested for the requesting party.

(a) The OIG may establish and maintain a set of questions corresponding to the categories of opinion subject matter as set forth in § 1008.5(a) of this part as appropriate. The questions will be designed to elicit specific information relevant to the advisory opinion being sought; however, answering the questions is voluntary.

(b) Questions the OIG suggests the requestor to address may be obtained from the OIG. Requests should be made in writing, specify the subject matter and be sent to the headquarter offices of the OIG.

(c) When submitting a request for an advisory opinion, a requestor may answer the questions corresponding to the subject matter for which the opinion is requested. The extent to which any of the questions is not fully answered may effect the content of the advisory opinion.

Subpart C—Advisory Opinion Fees

§ 1008.31 OIG fees for the cost of advisory opinions.

(a) *Responsibility for fees.* The requestor is responsible for paying a fee equal to the costs incurred by the Department in responding to the request for an advisory opinion.

(b) *Initial payment.* A request for an advisory opinion must be accompanied by a check or money order payable to the Treasury of the United States for \$250. This initial payment is non-refundable.

(c) *Calculation of costs.* Prior to the issuance of the advisory opinion, the OIG will calculate the costs to be incurred by the Department in responding to the request. The calculation will include the costs of salaries and benefits payable to attorneys and others who have worked on the request in question, as well as administrative and supervisory support for such persons. The OIG has the exclusive authority to determine the cost of responding to a request for an advisory opinion and such determination is not reviewable or waivable.

(d) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (d)(3) of this section, to pay all costs incurred by the OIG in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may designate a triggering dollar amount. If the OIG estimates that the costs of processing the advisory opinion request have reached or are likely to exceed the designated triggering dollar amount, the OIG will notify the requestor.

(3) If the OIG notifies the requestor that the estimated cost of processing the request has reached or is likely to exceed the triggering dollar amount, the OIG will stop processing the request until such time as the requestor makes a written request for the OIG to continue processing the request. Any delay in the processing of the request for an advisory opinion attributable to these procedures will toll the time for issuance of an advisory opinion until the requestor asks the OIG to continue working on the request.

(4) If the requestor chooses not to pay for completion of an advisory opinion, or withdraws the request, the requestor is still obligated to pay for all costs incurred and identified by the OIG attributable to processing the request for an advisory opinion up to that point.

(5) If the costs incurred by the OIG in responding to the request are greater than the amount paid by the requestor, the OIG will, prior to the issuance of the advisory opinion, notify the requestor of any additional amount due. The OIG will not issue an advisory opinion until the full amount owed by the requestor has been paid. Once the requestor has paid the OIG the total amount due for the costs of processing the request, the OIG will issue the advisory opinion. The time period for issuing advisory opinions will be tolled from the time the OIG notifies the requestor of the amount owed until the time full payment is received.

(e) *Fees for outside experts.* (1) In addition to the fees identified in this section, the requestor also must pay any required fees for expert opinions, if any, from outside sources, as described in § 1008.33.

(2) The time period for issuing an advisory opinion will be tolled from the time that the OIG notifies the requestor of the need for an outside expert opinion until the time the OIG receives the necessary expert opinion.

§ 1008.33 Expert opinions from outside sources.

(a) The OIG may request expert advice from qualified sources on non-legal issues if necessary to respond to the advisory opinion request. For example, the OIG may require the use of appropriate medical reviewers, such as peer review organizations, to obtain medical opinions on specific issues.

(b) If the OIG determines that it is necessary to obtain expert advice to issue a requested advisory opinion, the OIG will notify the requestor of that fact and provide the identity of the appropriate expert and an estimate of the costs of the expert advice. As indicated in § 1008.31(e), the requestor must pay the estimated cost of the expert advice.

(c) Once payment is made for the cost of the expert advice, the OIG will arrange for a prompt expert review of the issue or issues in question.

Subpart D—Submission of a Formal Request for an Advisory Opinion

§ 1008.36 Submission of a request.

(a) A request for a formal advisory opinion must be submitted in writing. An original and 2 copies of the request

should be addressed to the headquarter offices of the OIG.

(b) Each request for an advisory opinion must include—

(1) The identities, including the names and addresses, of the requestor and of all other actual and potential parties, to the extent known to the requestor to the arrangement that is the subject of the request for an advisory opinion;

(2) The name, title, address, and daytime telephone number of a contact person who will be available to discuss the request for an advisory opinion with the OIG on behalf of the requestor;

(3) A declaration of the subject category or categories as described in § 1008.5 of this part for which the advisory opinion is requested;

(4) A complete and specific description of all relevant information bearing on the arrangement for which an advisory opinion is requested and on the circumstances of the conduct,¹ including—

(i) Background information,

(ii) Complete copies of all operative documents, and

(iii) Detailed statements of all collateral or oral understandings, if any;

(5) All Medicare and Medicaid provider numbers used by all parties to the arrangement;

(6) Signed certifications by the requestor, as described in § 1008.37 of this part; and

(7) A check or money order payable to the Treasury of the United States in the amount of \$250, as discussed in § 1008.31(b) of this part.

§ 1008.37 Disclosure of ownership and related information.

Each individual or entity requesting an advisory opinion will supply full and complete information as to the identity of each entity owned or controlled by the individual, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1320a-3(a)(1)) and part 420 of this chapter.

§ 1008.38 Signed certifications by the requestor.

(a) Every request must include the following signed certification: "With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the

information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief."

(b) If the advisory opinion relates to a proposed arrangement, the request must also include the following signed certification: "The arrangement described in this request for an advisory opinion is one that [the requestor] in good faith plans to undertake." This statement may be made contingent on a favorable OIG advisory opinion, in which case, the phrase "if the OIG issues a favorable advisory opinion" should be added to the certification.

(c) The certification(s) will be signed by—

(1) The requestor, if the requestor is an individual;

(2) The chief executive officer, or comparable officer, of the requestor, if the requestor is a corporation; or

(3) The managing partner of the requestor, if the requestor is a partnership.

§ 1008.39 Additional information.

(a) If the request for an advisory opinion does not contain all of the information required by § 1008.36 of this part, or the OIG believes it needs more information prior to rendering an advisory opinion, the OIG may, at any time, request whatever additional information or documents it deems necessary. The time period for the issuance of an advisory opinion will be tolled from the time the OIG requests the additional information from the requestor until such time as the OIG determines that it has received the requested information.

(b) The OIG may request additional information before or after the request for an advisory opinion has been accepted.

(c) Additional information should be provided in writing, signed by the same person who signed the initial request and certified by this person to be a true, correct and complete disclosure of the requested information in a manner equivalent to that described in § 1008.37 of this part.

(d) In connection with any request for an advisory opinion, the OIG or DoJ may conduct whatever independent investigation they believe appropriate.

§ 1008.40 Withdrawal.

The requestor of an advisory opinion may withdraw the request prior to the issuance of a formal advisory opinion by the OIG. The withdrawal must be written and must be submitted to the same address as the submitted request, as indicated in §§ 1008.18(b) and

1008.36(a) of this part. Regardless of whether the request is withdrawn, the requestor must pay the costs expended by the OIG in processing the opinion, as discussed in § 1008.31(d) of this part. The OIG reserves the right to retain any request for an advisory opinion, documents and information submitted to it under these procedures, and to use them for any governmental purposes.

Subpart E—Obligations and Responsibilities of the OIG

§ 1008.41 OIG acceptance of the request.

(a) Upon receipt of a request for an advisory opinion, the OIG will promptly make an initial determination of whether the submission includes all of the information the OIG will require to process the request.

(b) Within 10 working days of receipt of the request, the OIG will—

(1) Formally accept the request for an advisory opinion,

(2) Notify the requestor of what additional information is needed, or

(3) Decline to formally accept the request.

(c) If the requestor provides the additional information requested, or otherwise resubmits the request, the OIG will process the resubmission in accordance with paragraphs (a) and (b) of this section as if it was an initial request for an advisory opinion.

(d) Upon acceptance of the request, the OIG will notify the requestor by regular U.S. mail of the date that the request for the advisory opinion was formally accepted.

(e) The 60-day period for issuance of an advisory opinion set forth in

§ 1008.43(c) of this part will not commence until the OIG has formally accepted the request for an advisory opinion.

§ 1008.43 Issuance of a formal advisory opinion.

(a) An advisory opinion will be considered issued, once payment is received, when it is dated, numbered, and signed by an authorized official of the OIG.

(b) An advisory opinion will contain a description of the material facts known to the OIG with regard to the arrangement for which an advisory opinion has been requested. The advisory opinion will state the OIG's opinion regarding the subject matter of the request based on the facts provided and known to the OIG.

(c)(1) The OIG will issue an advisory opinion, in accordance with the provisions of this part, within 60 days after the request for an advisory opinion has been formally accepted;

¹ The requestor is under an affirmative obligation to make full and true disclosure with respect to the facts regarding the advisory opinion being requested.

(2) If the 60th day falls on a Saturday, Sunday, or Federal holiday, the time period will end at the close of the business day next following the weekend or holiday;

(3) The 60 day period will be tolled from the time the OIG—

(i) Notifies the requestor that the costs have reached or are likely to exceed the triggering amount until the time when the OIG receives written notice from the requestor to continue processing the request;

(ii) Requests additional information from the requestor until the time the OIG receives the requested information;

(iii) Notifies the requestor of the full amount due until the time the OIG receives payment of the full amount owed; and

(iv) Notifies the requestor of the need for expert advice until the time the OIG receives the expert advice.

(d) After the OIG has notified the requestor of the full amount owed and the OIG has received full payment of that amount, the OIG will issue the advisory opinion and promptly mail it to the requestor by regular first class U.S. mail.

§ 1008.45 Rescission.

Any advice given by the OIG is without prejudice to the right of the OIG to reconsider the questions involved and, where the public interest requires, to rescind or revoke the action. Notice of such rescission or revocation will be given to the requestor so that the individual or entity may discontinue the course of action taken in accordance with the OIG advisory opinion. The OIG will not proceed against the requestor with respect to any action taken in good faith reliance upon the OIG advice under this part, where all the relevant facts were fully, completely and accurately presented to the OIG, and where such action was promptly discontinued upon notification of rescission or revocation of the OIG approval.

§ 1008.47 Disclosure.

(a) Advisory opinions issued and released in accordance with the provisions set forth in this part will be available to the public.

(b) Promptly after the issuance and release of an advisory opinion to the requestor, a copy of the advisory opinion will be available for public inspection between the hours of 10:00 a.m. and 3:00 p.m. on normal business days at the headquarter offices of the OIG and on the DHHS/OIG web site.

(c) Any pre-decisional document, or part of such pre-decisional document, that is prepared in the OIG, DoJ or any

other Department or agency of the United States in connection with an advisory opinion request under the procedures set forth in this part will be exempt from disclosure under 5 U.S.C. 552, and will not be made publicly available.

(d) Documents submitted by the requestor to the OIG in connection with a request for an advisory opinion will be available to the public to the extent authorized by 5 U.S.C. 552, through procedures set forth in 45 CFR part 5.

(e) Nothing in this section will limit the OIG's right, in its discretion, to issue a press release or otherwise publicly disclose the identity of the requesting party or parties, and the nature of the action taken by the OIG upon the request.

Subpart F—Scope and Effect of OIG Advisory Opinions

§ 1008.51 Exclusivity of OIG advisory opinions.

The only method for obtaining a binding advisory opinion regarding any of the subject matters set forth in § 1008.5(a) is through the procedures described in this part. No binding advisory opinion, oral or written, has or may be issued by the OIG regarding the specific matters set forth in § 1008.5(a) except through written opinions issued in accordance with this part.

§ 1008.53 Affected parties.

An advisory opinion issued by the OIG will have no application to any individual or entity that does not join in the request for the opinion. No individual or entity other than the requestor(s) may rely on an advisory opinion.

§ 1008.55 Admissibility of evidence.

(a) The failure of a party to seek an advisory opinion may not be introduced into evidence to prove that the party intended to violate the provisions of sections 1128, 1128A or 1128B of the Act.

(b) An advisory opinion not issued to a person may not be introduced into evidence to prove that person did not intend to violate the provisions of sections 1128, 1128A or 1128B of the Act.

§ 1008.59 Range of the advisory opinion.

(a) An advisory opinion will state only the OIG's opinion regarding the subject matter of the request. If the arrangement for which an advisory opinion is requested is subject to approval or regulation by any other agency, such advisory opinion will not be taken to indicate the OIG's views on

the legal or factual issues that may be raised before that agency.

(b) An advisory opinion issued under this part will not bind or obligate any agency other than the Department. It will not affect the requestor's, or anyone else's, obligations to any other agency, or under any statutory or regulatory provision other than that which is the specific subject matter of the advisory opinion.

Dated: December 26, 1996.

June Gibbs Brown,

Inspector General, Department of Health and Human Services.

Approved: January 28, 1997.

Donna E. Shalala,
Secretary.

[FR Doc. 97-4086 Filed 2-18-97; 8:45 am]

BILLING CODE 4150-04-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 199

[CGD 84-069]

RIN 2115-AB72

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Interim rule, partial suspension; request for comments.

SUMMARY: On May 20, 1996 the Coast Guard published an interim rule revising the lifesaving equipment regulations for U.S. inspected vessels. The interim rule included provisions for vessels not on international routes to comply with certain new requirements by October 1, 1997 and October 1, 2001. The Coast Guard has received comments concerning the regulatory analysis for the interim rule which may lead to changes to the lifesaving requirements in the final rule. To prevent any economic expenditures based on the interim rule which might not be necessary under the final rule, the Coast Guard is suspending the implementation requirements for certain provisions in the interim rule. The Coast Guard requests comments on the economic impacts of the lifesaving requirements covered by the partial suspension.

DATES: The suspension of § 199.10(i)(1) (i), (ii) and (iii) is effective February 19, 1997. Comments must be received on or before April 21, 1997.

ADDRESSES: Mail comments to the Executive Secretary, Marine Safety Council (G-LRA) [CGD 84-069], U.S. Coast Guard Headquarters, 2100 Second

Street SW., Washington, DC 20593-0001 or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Markle, Chief, Lifesaving and Fire Safety Standards Division (G-MSE-4), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1444, fax (202) 267-1069, E-mail "rmarkle@comdt.uscg.mil." Normal office hours are between 8 a.m. and 5 p.m.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is set out in the preamble of the interim rule entitled Lifesaving Equipment (61 FR 25272; May 20, 1996).

Reason for Partial Suspension

After publication of the interim rule, the Coast Guard received comments, particularly from the passenger vessel industry, expressing concerns about the new lifesaving requirements for vessels not on international voyages. Passenger vessel industry comments stated that requirements to carry additional lifesaving equipment could not be justified in view of the excellent safety record of these vessels. The comments also questioned the validity of the regulatory analysis supporting these requirements.

The Coast Guard understands that owners of some vessels affected by the new lifesaving requirements may be planning purchases of equipment or changes in manning to meet the October 1, 1997, implementation date and may even be planning modifications to meet the October 1, 2001, implementation date. The review of comments and reassessment of the regulatory evaluation will probably justify some changes in the final rule. To prevent any economic expenditures in reliance on the interim rule which may prove unnecessary upon publication of the final rule, the Coast Guard is suspending the implementation

provisions in §§ 199.10(i)(1) (i) through (iii) until issuance of the final rule. Since the suspended provisions apply only to requirements which were new at the interim rule stage, this partial suspension will effectively leave existing vessels operating in accordance with their existing Certificate of Inspections until the final rule and its implementation schedule are published.

The Coast Guard also received comments questioning the application of lifesaving requirements to passenger vessels built after October 1, 1996. The Coast Guard is also reassessing lifesaving requirements for these new vessels which will be operated on other than international voyages. If you are presently building a new vessel or considering lifesaving equipment requirements for new construction, you are encouraged to contact your local Officer in Charge of Marine Inspection for an appropriate exemption under 46 CFR 199.20(d). You are also encouraged to comment on the application of lifesaving equipment requirements to newly constructed vessels operating on other than international voyages. The Coast Guard will consider all comments received during the comment period. It may change 46 CFR 199.10 based on the comments.

Small Business Compliance Guidance

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, the Coast Guard wants to provide small entities with assistance in understanding this rule so they can better evaluate its effects on them and participate in the rulemaking process.

If you are a small business affected by this rule and have questions concerning its provisions or options for compliance, please contact your local Officer in Charge, Marine Inspection, for assistance.

Request for Comments

The Coast Guard encourages interested persons to submit specific comments limited to the requirements in 46 CFR 199.10 as they apply to new and existing passenger vessels on other than international voyages. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD 84-069] and the specific section of the interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for

copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard plans no additional public meetings.

Regulatory Process Considerations

Although the interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866, due to its nature, it was reviewed by the Office of Management and Budget (OMB) under that order. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S.C.). This interim rule will have no effect on the environment and it is categorically excluded from further environmental documentation in accordance with section 2.B.2.34(e) of the NEPA Implementing Procedures, COMDTINST M16475.1B. If you are a small business affected by the interim rule or this partial suspension, you are encouraged to submit comments to the docket concerning the economic impact of these actions. The final rule will address any economic impacts, including impacts on small businesses, if any.

List of Subjects in 46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard is amending 46 CFR part 199 as follows:

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

1. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

§ 199.10 [Amended]

2. In § 199.10 paragraphs (i)(1) (i) through (iii) are suspended.

Dated: February 12, 1997.

J. C. Card,

Rear Admiral, U.S. Coast Guard Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 97-3998 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 90****[General Docket Nos. 89-573 and 90-7; DA 96-2066]****Addressing Amendments for the 821-824/866-869 MHz Bands as Submitted by the Regional Planning Committees of the Washington, DC and Philadelphia, PA Metropolitan Areas**

SUMMARY: This action addresses amendments for the 821-824/866-869 MHz bands as submitted by the regional planning committees of the Washington, DC Metropolitan Area ("Region 20") and the Philadelphia, PA Metropolitan Area ("Region 28"). Such action is required by procedures established by the Commission for the development of regional plans under the Public Safety National Plan (National Plan) for the public safety radio services. The National Plan was developed to ensure that channels allocated in the 821-824/866-869 MHz bands were used effectively and efficiently for important public safety functions such as crime control, fire fighting, and emergency medical services. This decision furthers the Commission's goal of promoting efficient and effective public safety communications. The effect of the action conditionally accepts the Region 20 amendment to modify its respective regional plan subject to the finding of additional information and to return the Region 28 amendment for further coordination with adjacent regions as provided by the National Plan.

FOR FURTHER INFORMATION CONTACT: William Cross of the Commission's Wireless Telecommunications Bureau at (202) 418-0680 or wcross@fcc.gov (Internet).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 96-2066, adopted and released

December 9, 1996. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800. The unofficial text of this Order is available on the Internet at: <http://www.fcc.gov/Bureaus/Wireless/Orders/da962066.txt>. This Order is also available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D C 20554.

SUMMARY OF THE ORDER:

1. This Order addresses amendments submitted by the regional planning committees of the Washington, DC Metropolitan Area ("Region 20") and the Philadelphia, PA Metropolitan Area ("Region 28"). In separate amendments, each committee proposes to modify their respective regional plans for the 821-824/866-869 MHz bands as provided by the Public Safety National Plan ("National Plan"). See Report and Order, 3 FCC Rcd 905; 53 FR 1022 (January 15, 1988).

2. Oppositions have been filed against both amendments. Both amendments concern the manner in which public safety spectrum governed by the National Plan is allocated among adjacent regions to meet the mobile communications requirements of public safety and special emergency entities.

3. In reviewing Region 20, the Commission noted that there are three elements of the Region 20 amendment that cause concern: (1) The lack of coordination with adjacent regions, (2) the licensing of stations prior to plan approval, and (3) a channel designation to an individual. Although the Commission has clearly stated that inter-regional coordination is mandatory, the lack of consensus between the parties appears to have inhibited the expansion of public safety telecommunications in these bands for these critical metropolitan areas. Region 20 points out that a review of the record

affirms that the channel assignments cited by Region 28 and other parties as potential problems all pertain to channels contained in plans previously approved by the Commission. The Commission also found that the channels under consideration at this time have already been licensed by the Commission.

4. For these reasons, Region 20's amendment is accepted subject to the following conditions: (a) A detailed statement that establishes satisfactory inter-regional coordination procedures (See paragraph 11 of *Order*)—to be filed with Acting Secretary of the Commission and with copies to the Private Wireless Division of the Commission's Wireless Telecommunications Bureau by March 30, 1997; (b) a list denoting the current status of construction and operation of stations licensed on the new channels set forth in the Region 20 amendment (See paragraph 15 of *Order*)—to be similarly filed by January 30, 1997; and (c) a change from "MCT Medical Services" to an appropriate channel designation (See paragraph 18 of *Order*)—to be similarly filed by January 30, 1997.

5. Regarding Region 28, the Commission found that Region 28 had not coordinated its amendment in advance as required; and has not yet obtained concurrence from the adjacent regions. Consequently, Region 28's amendment is returned for further coordination so that discussions can commence between the interested parties.

List of Subjects in 47 CFR Part 90

Public safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-4028 Filed 2-18-97; 8:45 am]

BILLING CODE 6712-01-P

Proposed Rules

Federal Register

Vol. 62, No. 33

Wednesday, February 19, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-0961]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a second proposal revising the official staff commentary to Regulation M which implements the Consumer Leasing Act. The act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. Regulation M was revised in September 1996 under the Board's Regulatory Planning and Review program which calls for the periodic review of Board regulations. The commentary applies and interprets the requirements of Regulation M. A proposal to revise the commentary was published in September 1995. This proposal includes material that was published for comment in September 1995, incorporates guidance on the final rule issued in September 1996, and addresses certain questions raised following public review of the final rule.

DATES: Comments must be received by March 13, 1997.

ADDRESSES: Comments should refer to Docket No. R-0961, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. They may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room are accessible from the courtyard entrance on 20th Street, NW. (between Constitution Avenue and C Street). Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP-500 of the

Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT:

Kyung H. Cho-Miller or Obrea Otey Poindexter, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or 452-3667. For users of Telecommunications Devices for the Deaf (TDD) only, contact Dorothea Thompson, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA is implemented by the Board's Regulation M (12 CFR part 213). An official staff commentary (Supplement I-CL-1 to 12 CFR part 213) provides guidance to lessors in applying the regulation to specific transactions. The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed \$25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act.

In September 1996, the Board approved a final rule revising Regulation M, after a review of the regulation and consumer leasing generally. The review was conducted under the Board's Regulatory Planning and Review Program which calls for the periodic review of Board regulations with four goals in mind: To clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions.

The Board began the review of Regulation M in November 1993, with the publication of an advance notice of proposed rulemaking (58 FR 61035, November 19, 1993). In September 1995, the Board published a proposal revising the regulation and the staff commentary (60 FR 48752, September 20, 1995; comment period extended, 60 FR 62349

December 6, 1995). The proposal contained substantive revisions to the regulation, including new disclosure requirements.

The September 1996 final rule includes new disclosures to supplement the act's requirements (61 FR 52246, October 7, 1996). The major changes primarily affect motor-vehicle leasing. They include a mathematical progression on how scheduled payments are derived (using figures such as the gross capitalized cost of a lease, the vehicle's residual value, the amount of depreciation, and the rent charge) and a warning statement about charges for terminating a lease early. General changes in the format of the disclosures require that certain lease disclosures be segregated from other information. A lessor is not required to disclose the cost of a lease expressed as a percentage rate; however, if a rate is disclosed or advertised, a special notice must accompany the rate stating that it may not measure the overall cost of financing the lease. Further, a rate in an advertisement cannot be more prominent than any other Regulation M disclosure.

The final rule also implements amendments to the CLA contained in the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160), allowing a toll-free number or a print advertisement to substitute for certain lease disclosures in radio commercials (which was expanded in the final rule to television commercials) and makes other changes to the advertising rules. The CLA's advertising rules were amended and streamlined on September 30, 1996 when the Congress enacted the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104-208, 110 Stat. 3009). The Board issued a proposal to implement those changes. (62 FR 62, January 2, 1997.)

The Board is now publishing an updated proposal to the commentary. This proposal includes material that was published for comment in September 1995, incorporates guidance on the September 1996 final rule, and addresses certain questions raised following public review of the final rule. It is contemplated that the proposed revisions to the Regulation M commentary will be adopted in final form in April 1997.

II. Discussion of Proposed Revisions

The following discussion covers the proposed revisions to the Regulation M commentary section-by-section. Most of the discussion focuses on new comments and significant revisions to existing comments.

Introduction

Current comments I-3, I-4, and I-6 would be deleted as obsolete or unnecessary. Comments I-1, I-2, and I-5 would be redesignated accordingly.

Section 213.1—Authority, Scope, Purpose, and Enforcement

Current	Proposed
1-1	1-1.
1-2	Deleted as unnecessary (see Appendix C).

Section 213.2—Definitions

2(a) Definitions

Current	Proposed
2(a)(2)-1 ..	2(b)-1 and -2; including text from former § 213.2(a)(2).
2(a)(2)-2 ..	2(b)-3.
2(a)(4)-1 ..	2(d)-1 new.
2(a)(4)-2 ..	2(h)-1; includes text from former § 213.2(a)(4).
2(a)(4)-3 ..	2(h)-4.
2(a)(6)-1 ..	2(h)-2.
2(a)(6)-2 ..	2(e)-1.
2(a)(6)-3 ..	2(e)-2.
2(a)(6)-4 ..	2(e)-3 new.
2(a)(6)-5 ..	2(e)-6.
2(a)(6)-6 ..	2(e)-4.
2(a)(7)-1 ..	2(e)-5 new; includes text from former § 213.2(a)(3).
2(a)(8)-1 ..	2(e)-8.
2(a)(9)-1 ..	2(e)-7.
2(a)(12)-1	2(f)-1 new.
2(a)(14)-1 and -2.	2(g)-1.
2(a)(14)-3 and -4.	2(h)-3.
2(a)(14)-5	2(i)-1.
2(a)(14)-6	2(l)-1.
2(a)(15)-1	2(m)-1 and -2.
2(a)(15)-2	2(m)-3.
2(a)(15)-3	2(m)-4.
2(a)(17)-1 through -5.	4(l)-2.
2(a)(18)-1 through -3.	2(o)-2.
2(b)-1	2(o)-1; includes text from former § 213.2(a)(15).
2(b)-2	2(o)-3.
	Deleted as unnecessary.
	Deleted as unnecessary.
	Deleted as unnecessary.
	4(b)-1.

2(b) Advertisement

Comment 2(b)-1, current comment 2(a)(2)-1, would be revised to include examples of advertisements formerly in

§ 213.2(a)(2) and to indicate that the term “advertisement” includes electronic messages.

2(d) Closed-end Lease

Proposed comment 2(d)-1 provides general guidance on the definition of a closed-end lease.

2(e) Consumer Lease

Comment 2(e)-2, current comment 2(a)(6)-2, would be revised to clarify that leases with penalties for not continuing beyond an initial four months are covered under the regulation.

Proposed comment 2(e)-3 provides guidance on the total contractual obligation for purposes of determining whether a lease is covered under the regulation, and indicates that the total contractual obligation may be different from the total of payments disclosed under § 213.4(e).

Proposed comment 2(e)-5 incorporates former § 213.2(a)(3), the statutory definition of agricultural purpose in section 103(s) of the TILA. Comment 2(e)-7, current comment 2(a)(6)-6, would be revised to add another example of a lease deemed incidental to a service. The narrow list of exceptions is exhaustive, rather than illustrative. Questions have arisen about Regulation M coverage of cellular phones leased in conjunction with obtaining cellular service. Cellular service providers typically offer customers the opportunity to lease or purchase cellular telephones when subscribing for cellular service. The leasing of a cellular telephone is not incidental to obtaining cellular service and is, thus, covered under the regulation.

2(f) Gross Capitalized Cost

Proposed comment 2(f)-1 provides guidance on what type of fees are included or excluded from the gross capitalized cost disclosure in § 213.4(f)(1).

2(h) Lessor

Comment 2(h)-1, current comment 2(a)(4)-1, would be revised to include the definition of the phrase “arrange for leasing of personal property” in former § 213.2(a)(4).

2(m) Realized Value

Comment 2(m)-3 provides guidance on what is included or what may be excluded from the realized value, combining current comments 2(a)(14)-3 and -4. The second and third sentences of current comment 2(a)(14)-4 are deleted as unnecessary.

2(o) Security Interest and Security

Comment 2(o)-1, current comment 2(a)(15)-2, would be revised to include examples of a security interest formerly in § 213.2(a)(15).

Questions have arisen about whether interest on a security deposit meets the definition of a security interest for purposes of this regulation and thus required to be disclosed. Such interest is required to be disclosed if it is considered a security interest under state or other applicable law.

Section 213.3—General Disclosure Requirements

3(a) General Requirements

Current	Proposed
4(a)-1	3(a)-1.
4(a)-2	Moved to § 213.3(f).
4(a)-3	3(a)(1)-1.
4(a)-4	3(a)-4.
4(a)-5	Deleted as unnecessary.
4(a)(1)-1 ..	3(a)-2 and -3.
4(a)(1)-2 ..	Deleted as unnecessary.
4(a)(2)-1 ..	4(b)-1.
4(a)(2)-2 ..	3(a)(1)-2.
4(a)(2)-3 ..	3(a)(1)-3 new.
4(a)(2)-4 ..	3(a)(1)-4.
4(a)(2)-5 ..	Deleted as unnecessary.
4(a)(4)-1 ..	3(a)(1)-5.
4(a)(4)-2 ..	3(a)(2)-1 through -3 new.
4(b)-1	Deleted as unnecessary, see revised § 213.3(a)(4).
4(c)-1	Deleted as unnecessary, see revised § 213.3(a)(4).
4(d)-1	3(b)-1.
4(d)-2	3(c)-1.
4(d)-3	3(d)(1)-1 through -5.
4(d)-4	Deleted as unnecessary.
4(d)-5	Deleted as unnecessary.
4(d)-6	3(e)-1 and -2.
4(e)-1 and -2.	3(e)-3 new; text from footnote 1 of former regulation.

3(a) General Requirements

Comment 3(a)-1, current comment 4(a)-1, would be revised to clarify that leasing disclosures must reflect the terms of the legal obligation.

Comment 3(a)-4, current comment 4(a)-4, would be revised to provide guidance on disclosing a prior lease or loan balance added to a lease transaction.

3(a)(1) Form of Disclosures

Proposed comment 3(a)(1)-3 provides guidance on disclosing the lessor's address.

Comment 3(a)(1)-5, current comment 4(a)(2)-5, would be revised to provide additional guidance on ways in which lessors may demonstrate compliance with the requirement that lessees receive disclosures prior to being obligated on the lease transaction.

3(a)(2) Segregation of Certain Disclosures

Proposed comment 3(a)(2)–1 provides general guidance on the location of the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)–2 restates the general rule on including additional information among the segregated disclosures referenced in § 213.3(a)(2).

Proposed comment 3(a)(2)–3 provides a cross-reference to the commentary to appendix A which provides guidance on designing lease forms that are substantially similar to the regulation's model forms.

3(b) Additional Information; Nonsegregated Disclosures

Comment 3(b)–1, current comment 4(b)–1, on state law disclosures would be revised by adding clarifying language and by deleting the second sentence.

3(d) Use of Estimates

Comment 3(d)(1)–4, current comment 4(d)–4, would be revised to provide that in disclosing the estimate of the value of leased property at termination a lessor should indicate whether the retail or wholesale value is used. This provision was previously contained in Regulation M in the instructions to the model forms.

3(e) Effect of Subsequent Occurrence

Proposed comment 3(e)–3 incorporates the first sentence of footnote 1 of the former regulation.

Section 213.4—Context of Disclosures

Current	Proposed
4(g)–1	4(a)–1 new.
4(g)–2	Deleted as unnecessary.
4(g)(1)–1 ..	3(a)(1)–3; date requirement moved to § 213.3(a)(1).
4(g)(2)–1 ..	Deleted as unnecessary.
4(g)(2)–2 ..	Deleted as unnecessary.
4(g)(2)–3 ..	4(b)–1 (incorporates current comment 2(b)–2)).
	4(b)–2.
	4(b)–3 new (incorporated from the instructions to the model form in former appendix C–2).
	4(b)–4 through –6 new.
4(g)(3)–1 ..	Deleted as unnecessary.
4(g)(3)–2 ..	4(c)–1; reference to open-end lease deleted.
4(g)(4)–1 ..	4(n)–1.
4(g)(5)–1 ..	4(d)–1 and –2.
4(g)(5)–2 ..	Deleted as unnecessary; see § 213.3(a)(2).
	4(d)–3 new.
4(g)(5)–3 ..	4(d)–4.
4(g)(5)–4 ..	4(d)–5.
	4(d)–6 new.
	4(e)–1 new.
	4(f)–1 new.
	4(f)(1)–1 and –2 new.
	4(f)(2)–1 new.

Current	Proposed
	4(f)(8)–1 new.
	4(o)–1 new.
4(g)(6)–1 ..	4(o)–2.
4(g)(6)–2 ..	4(o)–3.
4(g)(7)–1 through –3.	4(p)–1 through –3.
4(g)(8)–1 ..	4(h)–1.
	4(h)–2 new.
4(g)(9)–1 ..	4(r)–1.
4(g)(10)–1 through –5.	4(q)–1 through –5.
4(g)(11)–1 through –3.	4(i)–1 through –3.
	4(i)–4 and –5 new.
4(g)(12)–1	4(g)(1)–3; the word “capitalized” is deleted.
4(g)(12)–2	4(g)(1)–4.
4(g)(12)–3	4(g)(1)–1.
	4(g)(1)–2 new.
	4(j)–1 new.
4(g)(14)–1 through –3.	4(l)–1 through –3.
	4(m)–1 new.
4(g)(15)–1	4(m)(2)–1.
4(g)(15)–2	deleted.
	4(m)(1)–1 new.
4(g)(15)–3	deleted.
4(g)(15)–4	4(m)(2)–2.
4(g)(15)–5	deleted.
4(g)(15)–6	4(m)(2)–3.
	4(s)–1 new.

4(a) Description of Property

Proposed comment 4(a)–1 clarifies that the description of leased property cannot be among the segregated disclosures.

4(b) Total Amount Due at Lease Signing

Comment 4(b)–1 would incorporate the first sentence of current comment 2(b)–2 on consummation.

Proposed comment 4(b)–3 incorporates a definition of “capitalized cost reduction” from the instructions in former appendix C–1 of the regulation.

Proposed comment 4(b)–4 provides guidance on negative net trade-in allowances where the amount owed on a prior loan or lease exceeds an agreed-upon trade-in value.

Proposed comment 4(b)–5 clarifies that a rebate would be included in the itemization under this section only when used to reduce an amount due at lease signing.

Proposed comment 4(b)–6 clarifies that where the balance sheet method is required, in motor-vehicle leases, the totals in each column must equal one another.

4(d) Other Charges

Comment 4(d)–1, current comment 4(g)(5)–1, would be revised to provide

flexibility in making the “other charges” disclosure.

Proposed comment 4(d)–3 clarifies that third-party charges are not disclosed under § 213.4(d).

Proposed comment 4(d)–6 provides guidance on the disclosure of optional “disposition” fees.

4(e) Total of Payments

Proposed comment 4(e)–1 explains the additional statement in the total of payments disclosure for open-end leases.

4(f) Payment Calculation

Proposed comment 4(f)–1 clarifies that lessors should defer to state or other applicable law in determining whether the leased property is a motor vehicle.

4(f)(1) Gross Capitalized Cost

Proposed comment 4(f)(1)–1 provides guidance on disclosing the agreed upon value of a leased motor vehicle.

Proposed comment 4(f)(1)–2 provides guidance on providing the itemization of the gross capitalized cost.

4(f)(2) Capitalized Cost Reduction

Proposed comment 4(f)(2)–1 provides guidance on the amounts not included in the capitalized cost reduction disclosure.

4(f)(8) Lease Term

Proposed comment 4(f)(8)–1 clarifies the meaning of the phrase “lease term” referenced under § 213.4(f)(8).

4(g) Early Termination

Proposed comment 4(g)–2 provides guidance on disclosing the method used to determine the amount of an early termination charge.

4(h) Maintenance Responsibilities

Proposed comment 4(h)–2 clarifies that lessors may not disclose a description of the method used for calculating excess mileage charges if a specific amount for excess mileage is available.

4(i) Purchase Option

Proposed comment 4(i)–5 provides guidance on disclosing a “fair market value” purchase-option price.

Several commenters on the September 1995 proposal requested clarification on whether lessors are allowed to disclose a purchase-option fee and other fees and taxes applicable to the purchase option separately from the purchase-option price. Comments 4(i)–3 and –4, current comment 4(g)(11)–3, would be revised to allow lessors flexibility in disclosing fees associated with a purchase-option price. Further, with the September 1996

revisions to the disclosure format and since a lessee is not obligated to purchase the leased property, the purchase-option fee and any other fee associated with exercising the purchase option must be disclosed under § 213.4(i) and not § 213.4(d).

4(j) Statement Referencing Nonsegregated Disclosures

Proposed comment 4(j)–1 clarifies that inapplicable information may be deleted from the § 213.4(j) disclosure, which references and alerts consumers to read CLA required disclosures not included among the segregated disclosures.

4(l) Right of Appraisal

Comment 4(l)–2, current comment 4(g)(14)–2, would be revised to provide that a lessor must indicate when an appraisal should be based on the wholesale or retail value. This provision was contained in the former regulation in the instructions to the model forms.

4(m) Liability at End of Lease Term Based on Estimated Value

The regulation reformats this section, former § 213.4(g)(15), for clarity. The commentary has been similarly reformatted.

Proposed comment 4(m)–1 states the intent of section 183(a) of the CLA that lessors must pay the lessees' attorney's fees in all actions brought by lessors under § 213.4(m), even if those actions are decided in favor of the lessor.

4(n) Fees and Taxes

Proposed comment 4(n)–1 provides guidance on what taxes are disclosed under § 213.4(n).

4(o) Insurance

Proposed comment 4(o)–1 provides that § 213.4(o) applies to voluntary and required insurance provided in connection with a lease transaction.

Comment 4(o)–3, current comment 4(g)(6)–2, is revised to provide additional guidance on the disclosure of mechanical breakdown insurance.

4(p) Warranties or Guarantees

Comment 4(p)–1, current comment 4(g)(7)–1, would be revised to provide further guidance on identifying warranties under § 213.4(p), when lessors provide a comprehensive list of warranties to lessees.

4(s) Limitation on Rate Information

Proposed comment 4(s)–1 clarifies that a lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions, and Assumptions

Section 213.5, formerly § 213.4(h), contains the disclosure rules governing leases that are renegotiated, extended, or assumed. Many of the commentary provisions have been moved to the regulation. For example, the definitions of a renegotiation and an extension have been included in the regulation. This change parallels the approach under Regulation Z for refinancings and assumptions, 12 CFR 226.20.

Current	Proposed
4(h)–1	5–1.
4(h)–2	First sentence moved to § 213.5(a); second sentence deleted; third sentence moved to 5–1.
4(h)–3	Moved to § 213.5(d).
4(h)–4	Moved to § 213.5(b).
4(h)–5	5(b)–1.
	5(b)–2 new.
4(h)–6	Deleted as unnecessary.
4(h)–7	Moved to § 213.5(d)(6).
4(h)–8	Moved to § 213.5(d)(2).
4(h)–9	Moved to § 213.5(c).

5(b) Extension

Comment 5(b)–1, current comment 4(h)–5, would be revised to clarify that if a consumer lease is extended on a month-to-month basis for more than six months, new disclosures are required at the beginning of the seventh month, and also at the start of each seventh month thereafter. This revision incorporates into the commentary a longstanding interpretation originally issued under leasing provisions that were a part of Regulation Z (Truth in Lending) prior to 1982.

Proposed comment 5(b)–2 also incorporates a longstanding interpretation originally issued under the pre-1982 leasing provisions in Regulation Z that disclosures for a consumer lease, originally covered by the regulation and extended on a month-to-month basis for more than six months, should reflect the month-to-month nature of the transaction.

Section 213.7—Advertising

Current	Proposed
5(a)–1	7(a)–1.
5(a)–2	7(a)–2.
5(b)–1 and 2.	7(c)–1 and 2.
5(c)–1	7(b)–1.
5(c)–2	7(d)(1)–1.
	7(d)(2)–1 new.
5(d)–1	Deleted.
	7(e)–1 new.
	7(f)(1)–1 through –4 new.

The CLA advertising provisions were amended on September 30, 1996 by the Economic Growth and Regulatory Paperwork Reduction Act of 1996. The final rule revising the commentary will reference the revised provisions in the regulation that implement the statutory changes.

7(b) Clear and Conspicuous Standard

Proposed comment 7(b)–1 provides guidance on the clear and conspicuous standard. A comment in the September 1995 proposal which provided that lease disclosures must appear on a television screen for at least five seconds has been deleted. The comment was intended as guidance on the clear and conspicuous standard. It did not provide a safe harbor, as the “five second” rule may be inadequate as a test for determining full compliance with the clear and conspicuous standard.

7(b)(1) Amount Due at Lease Signing

Proposed comment 7(b)(1)–1 clarifies that an itemization of the amount due at lease signing or delivery is not required under § 213.7(b)(1).

Proposed comment 7(b)(1)–2 provides general guidance on the prominence rule in § 213.7(b)(1).

7(b)(2) Advertisement of a Lease Rate

Proposed comment 7(b)(2)–1 provides guidance on the location of the statement that must accompany any percentage rate stated in an advertisement.

7(d) Advertisement of Terms That Require Additional Disclosure

7(d)(2) Additional Terms

Commenters requested clarification on how third-party fees that vary by jurisdiction such as taxes, licenses and registration fees should be reflected in the total amount due at lease signing disclosure under § 213.7(d)(2)(ii). Comment 7(d)(2)–2 provides lessors flexibility in disclosing such fees.

7(e) Alternative Disclosures—Merchandise Tags

Proposed comment 7(e)–1 provides general guidance on disclosing multiple item leases with merchandise tags.

7(f) Alternative Disclosures—Television or Radio Advertisements

7(f)(1) Toll-Free Number or Print Advertisement

Proposed comment 7(f)(1)–1 clarifies that a newspaper circulated nationally may qualify as a publication in general circulation in the community served by the media station.

Proposed comment 7(f)(1)–2 provides guidance on establishing a number for

consumers to call for disclosure information.

Proposed comment 7(f)(1)–3 provides guidance on the use of a multi-function toll-free number to provide disclosures.

Proposed comment 7(f)(1)–4 provides general guidance on the statement that must accompany a toll-free number instructing consumers to call the number for details about costs and terms.

Section 213.8 Record Retention

Current	Proposed
6–1	8–1

Section 213.8 of the regulation was formerly § 213.6.

Section 213.9 Relations to State Laws

Section 213.9 of the regulation combines and simplifies former §§ 213.7 and 213.8. The comments to these sections, as well as references in former appendices A and B, have been deleted as unnecessary.

Appendix A Model Forms

Under the final rule, the model forms are moved from appendix C to appendix A. Comment app. A–2 would be deleted as unnecessary. Minor revisions would be made to other comments in this appendix. For example, comment app. A–1 would be revised to indicate that changes to the headings, format, and the content of the segregated disclosures should be minimal. Also the definition of a closed-end lease in comment app. A–3 would be deleted because a definition has been added in the regulation.

III. Form of Comment Letters

Comment letters should refer to Docket No. R–0961 and, when possible, should use a standard courier typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

The comment period ends on March 13, 1997. Normally, the Board provides a 60-day comment period, in keeping with the Board's policy statement on rulemaking (44 FR 3957, January 19, 1979). The proposed commentary revisions primarily include interpretations published for comment in September 1995 and guidance included in the supplemental

information to the September 1996 final rule. The Board believes that it is desirable to ensure that a commentary takes effect along with the final rule as promptly as possible. Accordingly, the Board is providing an abbreviated comment period.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, 12 CFR part 213 is proposed to be amended as follows:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 continues to read as follows:

Authority: 15 U.S.C. 1604.

2. Supplement I to Part 213—Official Staff Commentary to Regulation M would be revised to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

Introduction

1. *Official status.* The commentary in this supplement I is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation M (12 CFR part 213). Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act (15 U.S.C. 1640f). Section 130(f) protects lessors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Federal Reserve System.

2. *Procedures for requesting interpretations.* Under appendix C of Regulation M, anyone may request an official staff interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the Federal Register. No official staff interpretations are expected to be issued other than by means of this commentary.

3. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 213.4(f) are further divided by subparagraph, such as comment 4(f)(1)–1 and comment 4(f)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 4(a)–1. This introduction may be cited as comments I–1 through I–3. An appendix may be cited as comment app. A—1.

Section 213.1—Authority, Scope, Purpose, and Enforcement

1. *Foreign applicability.* Regulation M applies to all persons (including branches of

foreign banks or leasing companies located in the United States) that offer consumer leases to residents (including resident aliens) of any state as defined in § 213.2(p). The regulation does not apply to a foreign branch of a U.S. bank or to a leasing company leasing to a U.S. citizen residing or visiting abroad or to a foreign national abroad.

Section 213.2—Definitions

2(b) Advertisement.

1. *Coverage.* The term advertisement includes messages inviting, offering, or otherwise generally announcing to prospective customers the availability of consumer leases, whether in visual, oral, print or electronic media. Examples include:

- i. Messages in newspapers, magazines, leaflets, catalogs, and fliers.
- ii. Messages on radio, television, and public address systems.
- iii. Direct mail literature.
- iv. Printed material on any interior or exterior sign or display, in any window display, in any point-of-transaction literature or price tag that is delivered or made available to a lessee or prospective lessee in any manner whatsoever.
- v. Telephone solicitations.
- vi. Messages on the Internet.

2. *Exclusions.* The term does not apply to the following:

- i. Direct personal contacts, including follow-up letters, cost estimates for individual lessees, or oral or written communications relating to the negotiation of a specific transaction.
- ii. Informational material distributed only to businesses.
- iii. Notices required by federal or state law, if the law mandates that specific information be displayed and only the mandated information is included in the notice.
- iv. News articles controlled by the news medium.
- v. Market research or educational materials that do not solicit business.

3. *Persons covered.* See the commentary to § 213.7(a).

2(d) Closed-end lease.

1. *General.* In closed-end leases, sometimes referred to as “walk-away” leases, the lessee is not responsible for the residual value of the leased property at the end of the lease term.

2(e) Consumer lease.

1. *Primary purposes.* A lessor must determine in each case if the leased property will be used primarily for personal, family, or household purposes. If a question exists as to the primary purpose for a lease, the fact that a lessor gives disclosures is not controlling on the question of whether the transaction was exempt. The primary purpose of a lease is determined before or at consummation and a lessor need not provide Regulation M disclosures where there is a subsequent change in primary usage.

2. *Period of time.* To be a consumer lease, the initial term of the lease must be more than four months. Thus, a lease of personal property for four months, three months or on a month-to-month or week-to-week basis (even though the lease actually extends beyond four months) is not a consumer lease and is not subject to the disclosure

requirements of the regulation. However, a lease that imposes a penalty for not continuing a lease beyond four months is considered to have a term of more than four months. To illustrate:

i. A month-to-month lease with a penalty, such as the forfeiture of a security deposit for terminating before one year, is subject to the regulation.

ii. A three-month lease extended on a month-to-month basis and terminated after one year is not subject to the regulation.

3. *Total contractual obligation.* The total contractual obligation is not necessarily the same as the total of payments disclosed under § 213.4(e). The total contractual obligation includes nonrefundable amounts a lessee is contractually obligated to pay to the lessor. The term excludes:

i. Residual value amounts or purchase-option prices;

ii. Amounts collected by the lessor but paid to a third party, such as taxes, license and registration fees.

4. *Credit sale.* The regulation does not cover a lease that meets the definition of a credit sale in Regulation Z, 12 CFR 226.2(a)(16), which is defined, in part, as “a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

i. Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and services involved; and

ii. Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.”

5. *Agricultural purpose.* Agricultural purpose means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of personal property and services used primarily in farming. Agricultural products include horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

6. *Organization.* A consumer lease does not include a lease made to an organization such as a corporation or a government agency or instrumentality. Such a lease is not covered by the regulation even if the leased property is used (by an employee, for example) primarily for personal, family or household purposes, or is guaranteed by or subsequently assigned to a natural person.

7. *Leases of personal property incidental to a service.* The following leases of personal

property are deemed incidental to a service and thus are not subject to the regulation:

i. Home entertainment systems requiring the consumer to lease equipment that enables a television to receive the transmitted programming.

ii. Security alarm systems requiring the installation of leased equipment intended to monitor unlawful entries into a home.

iii. Propane gas service where the consumer must lease a propane tank to receive the service.

8. *Safe deposit boxes.* The lease of a safe deposit box is not a consumer lease under § 213.2(e).

2(f) *Gross capitalized cost.*

1. *Charges paid at lease signing.* The gross capitalized cost figure includes only those fees, charges, and other items, such as a prior unpaid lease balance, that are capitalized or amortized over the lease term. Charges paid at lease signing, such as taxes, are not included in the gross capitalized cost.

2(g) *Lessee.*

1. *Guarantors.* Guarantors are not lessees for purposes of the regulation.

2(h) *Lessor.*

1. *Arranger of a lease.* To “arrange” for the lease of personal property means to provide or offer to provide a lease that is or will be extended by another person under a business or other relationship pursuant to which the person arranging the lease (a) receives or will receive a fee, compensation, or other consideration for the service or (b) has knowledge of the lease terms and participates in the preparation of the contract documents required in connection with the lease. To illustrate:

i. An automobile dealer who, pursuant to a business relationship, completes the necessary lease agreement before forwarding it to the leasing company (to whom the obligation is payable on its face) for execution is “arranging” for the lease.

ii. An automobile dealer who, receiving no fee for the service, refers a customer to a leasing company that will prepare all relevant contract documents is not “arranging” for the lease.

2. *Consideration.* The term “other consideration” as used in comment 2(h)-1 refers to an actual payment corresponding to a fee or similar compensation and not to intangible benefits, such as the advantage of increased business, which may flow from the relationship between the parties.

3. *Assignees.* An assignee may be a lessor for purposes of the regulation in circumstances such as those described in *Ford Motor Credit Co. v. Cenance*, 452 U.S. 155 (1981). In that case, the U.S. Supreme Court held that an assignee was a creditor for purposes of the pre-1980 Truth in Lending Act and Regulation Z because of its substantial involvement in the credit transaction.

4. *Multiple lessors.* See the commentary to § 213.3(c).

2(j) *Organization.*

1. *Coverage.* The term organization includes joint ventures and persons operating under a business name.

2(l) *Personal property.*

1. *Coverage.* Whether property is personal property depends on state or other applicable

law. For example, a mobile home or houseboat may be considered personal property in one state but real property in another.

T32(m) *Realized value.*

1. *General.* Realized value refers to the value of the leased property at early termination or at the end of the lease term. It is not a required disclosure. It may be either the retail or wholesale value. Realized value is relevant only to leases in which the lessee's liability at early termination or at the end of the lease term is the difference between the residual value of the leased property and its realized value.

2. *Options.* Subject to the contract and to state or other applicable law, the lessor may calculate the realized value in determining the lessee's liability at the end of the lease term or at early termination in one of the three ways stated in § 213.2(m). If the lessor sells the property prior to making that determination, the price received for the property is the realized value. If the lessor does not sell the property prior to making that determination, the lessor may choose either the highest offer or the fair market value as the realized value.

3. *Determination of realized value.* Disposition charges are included in determining the realized value but amounts attributable to taxes may be excluded.

4. *Offers.* In determining the highest offer for disposition, the lessor may disregard offers that an offeror has withdrawn or is unable or unwilling to perform.

5. *Lessor's appraisal.* See commentary to § 213.4(l).

2(o) *Security interest and security.*

1. *Disclosable interests.* For purposes of disclosure, a security interest is an interest taken by the lessor to secure performance of the lessee's obligation. For example, if a bank that is not a lessor makes a loan to a leasing company and takes assignments of consumer leases generated by that company to secure the loan, the bank's security interest in the lessor's receivables is not a security interest for purposes of this regulation.

2. *General coverage.* An interest the lessor may have in leased property must be disclosed only if it is considered a security interest under state or other applicable law. The term includes, but is not limited to, security interests under the Uniform Commercial Code; real property mortgages, deeds of trust and other consensual or confessed liens whether or not recorded; mechanic's, materialman's, artisan's, and other similar liens; vendor's liens in both real and personal property; liens on property arising by operation of law; and any interest in a lease when used to secure payment or performance of an obligation.

3. *Insurance exception.* The lessor's right to insurance proceeds or unearned insurance premiums is not a security interest for purposes of this regulation.

Section 213.3—General Disclosure Requirements

3(a) *General requirements.*

1. *Basis of disclosures.* Disclosures must reflect the terms of the legal obligation between the parties. For example:

i. In a three-year lease with no penalty for termination after a one-year minimum term,

disclosures should be based on the full three-year term of the lease. The one-year minimum term is only relevant to the early termination provisions of §§ 213.4(g)(1), (k) and (l).

2. *Clear and conspicuous standard.* The clear and conspicuous standard requires that disclosures be reasonably understandable. For example, the disclosures must be presented in a way that does not obscure the relationship of the terms to each other. Appendix A of this part contains model forms that meet this standard. In addition, although no minimum type size is required, the disclosures must be legible, whether typewritten, handwritten, or printed by computer.

3. *Multipurpose disclosure forms.* A lessor may use a multipurpose disclosure form that enables the lessor to designate the specific disclosures applicable to a given transaction, consistent with the requirement that disclosures be clearly and conspicuously provided.

4. *Number of transactions.* Lessors have flexibility in handling lease transactions that may be viewed as multiple transactions. For example:

- i. When a lessor leases two items to the same lessee on the same day, the lessor may disclose the leases as either one or two lease transactions.
- ii. When a lessor sells insurance or other incidental services in connection with a lease, the lessor may disclose in one of two ways: a single lease transaction or a lease and a credit sale transaction.
- iii. When a lessor includes an outstanding lease or loan balance in a lease transaction, the lessor may disclose the prior loan or lease balance as part of a single lease transaction or may disclose it as a separate credit transaction.

3(a)(1) Form of disclosures.

1. *Cross-references.* In making disclosures, lessors may include in the nonsegregated disclosures a cross-reference to items contained among the segregated disclosures rather than repeat the items.

2. *Identification of parties.* While disclosures must be made clearly and conspicuously, lessors are not required to use the word "lessor" and "lessee" to identify the parties to the lease transaction.

3. *Lessor's address.* The lessor need only be identified by name; an address may be provided but is not required.

4. *Multiple lessors and lessees.* In transactions involving multiple lessors and multiple lessees, a single lessor may make all the disclosures to a single lessee as long as the disclosure statement identifies all the lessors and lessees.

5. *Lessee's signature.* The regulation does not require that the lessee sign the disclosure statement, whether disclosures are separately provided or are part of the lease contract. Nevertheless, to ensure that disclosures are given before a lessee becomes obligated on the lease transaction, the lessor may ask the lessee to sign the disclosure statement or an acknowledgement of receipt, may place disclosures that are included in the lease documents above the lessee's signature, or may include instructions alerting a lessee to read the disclosures prior to signing the lease.

3(a)(2) Segregation of certain disclosures.

1. *Location.* The segregated disclosures referred to in § 213.3(a)(2) may be provided on a separate document and the other required disclosures may be provided in the lease contract, so long as all disclosures are given at the same time.

2. *Additional information among segregated disclosures.* The disclosures required to be segregated may contain only the information required or permitted to be included among the segregated disclosures (see comments to § 213.4 for guidance on additional information in the segregated disclosures).

3. *Substantially similar.* See commentary to appendix A of this part.

3(b) Additional information; nonsegregated disclosures.

1. *State law disclosures.* A lessor may include among the nonsegregated disclosures any state law disclosures that are not inconsistent with the act and regulation under § 213.9, as long as they are not used or placed to mislead or confuse or detract from any disclosure required by the regulation in accordance with the standard set forth in § 213.3(b) for additional information.

3(c) Multiple lessors or lessees.

1. *Multiple lessors.* If a single lessor provides disclosures to a lessee on behalf of several lessors, all disclosures for the transaction must be given, even if the lessor making the disclosures would not otherwise have been obligated to make a particular disclosure.

3(d) Use of estimates.

3(d)(1) Standard.

1. *Time of estimated disclosure.* The lessor may use estimates to make disclosures if necessary information is unknown or unavailable at the time the disclosures are made. For example:

i. Section 213.4(n) requires the lessor to disclose the total amount payable by the lessee during the lease term for official and license fees, registration, certificate of title fees, or taxes. If these amounts are subject to increases or decreases over the course of the lease, the lessor may estimate the disclosures based on the rates or charges in effect at the time of the disclosure.

2. *Basis of estimates.* Estimates must be made on the basis of the best information reasonably available at the time disclosures are made. The "reasonably available" standard requires that the lessor, acting in good faith, exercise due diligence in obtaining information. The lessor may rely on the representations of other parties in obtaining information. For example, the lessor might look to the consumer to determine the purpose for which leased property will be used, to insurance companies for the cost of insurance, or to an automobile manufacturer or dealer for the date of delivery.

3. *Residual value of leased property at termination.* When the lessee's liability at the end of the lease term is based on the residual value of the leased property as determined at consummation, the estimate of the residual value must be reasonable and based on the best information reasonably available to the lessor (see § 213.4(m)). A lessor may use a

generally accepted trade publication listing estimated current or future market prices for the leased property or may rely on other information, its experience, or reasonable belief if those sources provide the better information. For example:

i. An automobile lessor offering a three-year open-end lease assigns a wholesale value to the vehicle at the end of the lease term. The lessor may disclose as an estimate a wholesale value derived from a generally accepted trade publication listing current wholesale values, if the trade publication is the best information available.

ii. Same facts as above, except that the lessor discloses an estimated value derived by adjusting the residual value quoted in the trade publication because, in its experience, the trade publication values either understate or overstate the prices actually received in local used-vehicle markets. The lessor may adjust estimated values quoted in trade publications based on the lessor's experience or reasonable belief that the values will be understated or overstated.

4. *Retail or wholesale value.* The lessor may choose either a retail or a wholesale value in estimating the value of leased property at termination, provided the choice is consistent with the lessor's general practice or intention when determining the value of the property at the end of the lease term. The lessor should indicate whether the value disclosed is a retail or wholesale value.

5. *Labelling estimates.* Generally, only the disclosure for which the exact information is unknown is labelled as an estimate. Nevertheless, when several disclosures are affected because of the unknown information, the lessor has the option of labelling as an estimate every affected disclosure or only the disclosure primarily affected.

3(e) Effect of subsequent occurrence.

1. *Subsequent occurrences.* Examples of subsequent occurrences include:

- i. An agreement between the lessee and lessor to change from a monthly to a weekly payment schedule.
- ii. An increase in official fees or taxes.
- iii. An increase in insurance premiums or coverage caused by a change in the law.
- iv. Late delivery of an automobile caused by a strike.

2. *Redisclosure.* When a disclosure becomes inaccurate because of a subsequent occurrence, the lessor need not make new disclosures unless new disclosures are required under § 213.5.

3. *Lessee's failure to perform.* The lessor does not violate the regulation if a previously given disclosure becomes inaccurate when a lessee fails to perform obligations under the contract and a lessor takes actions that are necessary and proper in such circumstances to protect its interest. For example, the addition of insurance or a security interest by the lessor because the lessee has not performed obligations contracted for in the lease is not a violation of the regulation.

Section 213.4—Content of Disclosures

4(a) Description of property.

1. *Placement of description.* Although the description of leased property may not be included among the segregated disclosures, a

lessor may choose to place the description directly above the segregated disclosures.

4(b) Amount due at lease signing.

1. *Consummation.* When a contractual relationship is created between the lessor and the lessee is a matter to be determined under state or other applicable law.

2. *Fees payable upon delivery.* This paragraph does not apply to fees paid at delivery, when delivery occurs after consummation. For example, if the lessee agrees to pay registration fees, sales taxes, and a delivery charge on the date the automobile is delivered sometime after consummation, none of these charges is an initial payment under § 213.4(b). The registration fees and sales taxes are disclosed under § 213.4(n), and the delivery charge is disclosed as an "other charge" under § 213.4(d).

3. *Capitalized cost reduction.* A capitalized cost reduction is a payment in the nature of a downpayment that reduces the amount of the leased property to be capitalized over the term of the lease. This amount does not include any amounts included in a periodic payment paid at lease signing.

4. *"Negative" equity trade-in allowance.* If an amount owed on a prior lease or loan exceeds an agreed upon trade-in value, the difference is not reflected as a negative trade-in allowance under § 213.4(b). The lessor may disclose the trade-in allowance as zero, not applicable, or leave a blank line.

5. *Rebates.* Only rebates applied toward an amount due at lease signing are required to be disclosed under § 213.4(b).

6. *Balance sheet approach.* In motor vehicle leases, the total for the column labeled "total amount due at lease signing" must equal the total for the column labeled "how the amount due at lease signing will be paid."

4(c) Payment schedule and total amount of periodic payments.

1. *Periodic payments.* The phrase "number, amount, and due dates or periods of payments" requires the disclosure of all payments made periodically, including taxes, maintenance and insurance charges. In addition, the lessor must disclose the total of the periodic payments.

4(d) Other charges.

1. *Coverage.* Section 213.4(d) requires the disclosure of charges that are anticipated by the parties as incident to the normal operation of the lease agreement. If a lessor is unsure whether a particular fee is an "other charge," the lessor may disclose the fee as such without violating § 213.4(d) or the segregation rule under § 213.3(a)(2).

2. *Excluded charges.* This section does not require disclosure of charges that are imposed when the lessee terminates early, fails to abide by, or modifies the terms of the existing lease agreement, such as charges for:

- i. Late payment.
- ii. Default.
- iii. Early termination.
- iv. Deferral of payments.
- v. Extension of the lease.

3. *Third-party fees and charges.* Third-party fees or charges collected by the lessor on behalf of third parties, such as taxes, are not disclosed under § 213.4(d).

4. *Relationship to other provisions.* The other charges mentioned in this paragraph

are charges that are not required to be disclosed under another provision of § 213.4. To illustrate:

i. A delivery charge that is paid after consummation is disclosed as an "other charge." A delivery charge that is paid at consummation, however, is disclosed as part of the amount due at lease signing under § 213.4(b), not as an "other charge."

ii. Occasionally, the price of a mechanical breakdown protection (MBP) contract is disclosed as an "other charge." More often, the price of MBP is reflected in the periodic payment disclosure under § 213.4(c), in which case it is not disclosed as an "other charge." In states where MBP is regarded as insurance, however, the cost should be disclosed in accordance with § 213.4(o), not as an "other charge."

5. *Lessee's liabilities at the end of the lease term.* Liabilities that the lease imposes upon the lessee at the end of the scheduled lease term and that must be disclosed under this section include disposition and "pick-up" charges.

6. *Optional "disposition" charges.* Disposition charges (and similar charges) that are anticipated by the parties as an incident to the normal operation of the lease agreement must be disclosed under § 213.4(d). If under a lease agreement, a lessee may return leased property to various locations, and the lessor charges a disposition fee depending upon the location chosen, under § 213.4(d), the lessor must disclose the highest amount charged. In such circumstances, the lessor may also include a brief explanation of the fee structure in the segregated disclosure. For example, if no fee or a lower fee is imposed for returning a leased vehicle to the originating dealer as opposed to another location, that fact may be disclosed. By contrast, if the terms of the lease treat the leased property returned outside the lessor's service area as a default, that fee is not disclosed as an "other charge," although it may be required to be disclosed under § 213.4(q).

4(e) Total of payments.

1. *Open-end lease.* An additional statement is required under § 213.4(e) for open-end leases because, with some limitations, a lessee is liable for the difference between the residual and realized values of the leased property.

4(f) Payment calculation.

1. *Motor-vehicle lease.* Whether leased property is a motor vehicle is determined by state or other applicable law.

4(f)(1) Gross capitalized cost.

1. *Agreed upon value of the vehicle.* The agreed upon value of a motor vehicle is the amount for the vehicle agreed upon by the lessor and lessee for purposes of the lease. This includes the amount of capitalized items such as charges for vehicle accessories and options, and delivery or destination charges. The lessor may also include taxes and fees for title, license, and registration. Charges for service or maintenance contracts, insurance products, guaranteed automobile protection, or an outstanding balance on a prior lease or loan are not included in the agreed upon value.

2. *Itemization of the gross capitalized cost.* The lessor may choose to provide the

itemization of the gross capitalized cost as a matter of course or only on request. In either case, the itemization must be provided at the same time as the other disclosures required by § 213.4. The itemization may not be included among the segregated disclosures.

4(f)(2) Capitalized cost reduction.

1. *Amounts not included.* The capitalized cost reduction does not include periodic payments paid at lease signing.

4(f)(8) Lease term.

1. *Definition.* Under § 213.4(f)(8) the "lease term" refers to the number of periodic payments.

4(g) Early termination.

4(g)(1) Conditions and disclosure of charges.

1. *Reasonableness of charges.* See the commentary to § 213.4(q).

2. *Description of the method.* A full description of the method of determining an early termination charge is required by the regulation. Lessors should attempt to provide consumers with clear and understandable descriptions of their early termination charges. Descriptions that are full, accurate, and not intended to be misleading will comply with the regulation, even if complex. In providing a full description of an early termination method, a lessor may use the name of a generally accepted method of computing the unamortized cost portion (also known as the "adjusted lease balance") of its early termination charges. For example, a lessor may state that the "constant yield" method will be utilized in obtaining the adjusted lease balance, but must specify how that figure, and any other term or figure, is used in computing the total early termination charge imposed upon the consumer. Additionally, if a lessor refers to a named method in this manner, the lessor must provide a written explanation of that method if requested by the consumer. The lessor has the option of providing the explanation as a matter of course in the lease documents or on a separate document.

3. *Default.* When default is also a condition for early termination of a lease, default charges must be disclosed under § 213.4(g)(1). See the commentary to § 213.4(q).

4. Lessee's liability at early termination.

When the lessee is liable for the difference between the unamortized cost and the realized value at early termination, the amount or the method of determining the amount of the difference must be disclosed under § 213.4(g)(1).

4(h) Maintenance responsibilities.

1. *Standards for wear and use.* No disclosure is required if a lessor does not impose standards for wear and use (such as excess mileage).

2. *Amount or method of determining excess mileage charges.* In a motor vehicle lease, a description of the method for calculating excess mileage charges may not be disclosed if a specific amount for excess mileage has been established.

4(i) Purchase option.

1. *Mandatory disclosure of no purchase option.* Generally the lessor need only make the specific required disclosures that apply to a transaction. In the case of the purchase option disclosure, however, a lessor must

disclose affirmatively that the lessee has no option to purchase the leased property when the purchase option is inapplicable.

2. *Existence of purchase option.* Whether a purchase option exists is determined by state or other applicable law. The lessee's right to submit a bid to purchase property at termination of the lease is not an option to purchase under § 213.4(i) if the lessor is not required to accept the lessee's bid and the lessee does not receive preferential treatment.

3. *Purchase-option fee.* A purchase-option fee must be disclosed under § 213.4(i), not § 213.4(d). The fee may be separately itemized or disclosed as part of the purchase-option price.

4. *Official fees and taxes.* The existence of official fees such as those for taxes, licenses, and registration charged in connection with the exercise of a purchase option may be disclosed under § 213.4(i) in several ways. The fees may be disclosed as part of the purchase-option price (with or without a reference to their inclusion in that price) or may be separately disclosed and itemized by category. Alternatively, a lessor may provide a statement such as fees for tags, taxes, and registration are not included in the purchase price.

5. *Purchase-option price.* Lessors must disclose the purchase-option price as a sum certain or a sum certain to be determined at a future date by reference to an independent source. The reference should provide sufficient information so that the lessee will be able to determine the actual price when the option becomes available. Statements of a purchase price as the "negotiated price" or the "fair market value" do not comply with the requirements of § 213.4(i).

4(j) Statement referencing nonsegregated disclosures.

1. *Content.* A lessor may delete inapplicable items from the disclosure. For example, if a lease contract does not include a security interest, that reference may be deleted.

4(l) Right of appraisal.

1. *Disclosure inapplicable.* When the lessee is liable at the end of the lease term or at early termination for unreasonable wear or use, but not for the residual value of the leased property, the lessor need not disclose the lessee's right to an independent appraisal. For example:

i. The automobile lessor may reasonably expect a lessee to return an undented car with four good tires at the end of the lease term. Even though it holds the lessee liable for the difference between a dented car with bald tires and the value of a car in reasonably good repair, the lessor is not required to disclose the lessee's appraisal right.

2. *Lessor's appraisal.* The lessor may obtain an appraisal of the leased property to determine its realized value. Such an appraisal, however, is not the one addressed in section 183(c) of the act, and the lessor still must disclose the lessee's independent right to an appraisal under § 213.4(l). In addition, a lessor must indicate whether the wholesale or retail appraisal value will be used.

3. *Time restriction on appraisal.* The regulation does not specify a time period in which the lessee must exercise the appraisal

right. The lessor may require a lessee to obtain the appraisal within a reasonable time after termination of the lease.

4(m) Liability at end of lease term based on residual value.

1. *Open-end leases.* Section 213.4(m) applies only to open-end leases.

2. *Lessor's payment of attorney's fees.* Section 183(a) of the act requires that the lessor pay the lessee's attorney's fees in all actions brought by the lessor under § 213.4(m), whether successful or not.

4(m)(1) Rent and other charges.

1. *General.* This disclosure is intended to represent the cost of financing an open-end lease based on charges and fees that the lessor requires the lessee to pay. Examples of disclosable charges, in addition to the rent charge, include acquisition, disposition, or assignment fees. Charges imposed by a third party whose services are not required by the lessor are not included in the § 213.4(m)(1) disclosure such as official fees and voluntary insurance.

4(m)(2) Excess liability.

1. *Coverage.* The disclosure limiting the lessee's liability for the value of the leased property does not apply at early termination.

2. *Leases with a minimum term.* If a lease has an alternative minimum term, the disclosures governing the liability limitation are not applicable for the minimum term. See the commentary to § 213.3(a).

3. *Charges not subject to rebuttable presumption.* The limitation on liability applies only to liability that is based on the residual value of the property at the end of the lease term. The regulation does not preclude a lessor from recovering other charges from the lessee at the end of the lease term. Examples of such charges include:

- i. Disposition charges.
- ii. Excess mileage charges.
- iii. Late payment and default charges.
- iv. Amounts by which the unamortized cost exceeds the residual value that have accrued in simple interest accounting leases because the lessee has not made timely payments.

4(n) Fees and taxes.

1. *Taxes.* If a tax payable by the lessor is passed on to the consumer and is reflected in the lease documentation or a sticker or tag affixed to the leased property, the tax must be disclosed under § 213.4(n). However, a tax payable by the lessor and absorbed as a cost of doing business need not be disclosed.

4(o) Insurance.

1. *Coverage.* A lessor must disclose information on the type and amount of insurance coverage, whether voluntary or required, as well as the cost if the insurance is obtained through the lessor.

2. *Lessor's insurance.* Insurance purchased by the lessor primarily for its own benefit, and absorbed as a business expense and not separately charged to the lessee, need not be disclosed under § 213.4(o) even if it provides an incidental benefit to the lessee.

3. *Mechanical breakdown protection.* Whether mechanical breakdown protection (MBP) purchased in conjunction with a lease should be treated as insurance is determined by state or other applicable law. In states that do not treat MBP as insurance, the lessor need not make § 213.4(o) disclosures. In such

cases the lessor may, however, disclose the § 213.4(o) information in accordance with the additional information provision in § 213.3(b). For MBP insurance contracts not capped by a dollar amount, lessors may describe coverage by referring to a limitation by mileage or time period, for example, the mechanical breakdown contract insures parts of the automobile for up to 100,000 miles.

4(p) Warranties or guarantees.

1. *Brief identification.* The statement identifying warranties may be brief and need not describe or list all warranties applicable to specific parts such as for air conditioning, radio, or tires in an automobile. For example, manufacturer's warranties may be identified simply by a reference to the standard manufacturer's warranty. If a lessor provides a comprehensive list of warranties to the lessee, the lessor must indicate which § 213.4(p) warranties apply or, alternatively, which warranties do not apply.

2. *Warranty disclaimers.* Although a disclaimer of warranties is not required by the regulation, the lessor may give a disclaimer as additional information in accordance with § 213.3(b).

3. *State law.* Whether an express warranty or guaranty exists is determined by state or other law.

4(q) Penalties and other charges for delinquency.

1. *Collection costs.* The automatic imposition of collection costs or attorney fees upon default must be disclosed under § 213.4(q). Collection costs or attorney fees that are not imposed automatically, but are contingent upon expenditures in conjunction with a collection proceeding or upon the employment of an attorney to effect collection, need not be disclosed.

2. *Charges for early termination.* When default is a condition for early termination of a lease, default charges must also be disclosed under § 213.4(g)(1). The § 213.4(q) and (g)(1) disclosures may be combined. Examples of combined disclosures are provided in the model lease disclosure forms in appendix A of this part.

3. *Simple-interest leases.* In a simple-interest accounting lease, the additional rent charge that accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment. Similarly, continued accrual of the rent charge after termination of the lease because the lessee fails to return the leased property does not constitute a default charge. In either case, if the additional charge accrues at a rate higher than the normal rent charge, the lessor must disclose the amount of or the method of determining the additional charge under § 213.4(q).

4. *Extension charges.* Extension charges that exceed the rent charge in a simple-interest accounting lease or that are added separately are disclosed under § 213.4(q).

5. *Reasonableness of charges.* Pursuant to section 183(b) of the act, penalties or other charges for delinquency, default, or early termination may be specified in the lease but only in an amount that is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss,

and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

4(r) Security interest.

1. *Disclosable security interests.* See § 213.2(o) and accompanying commentary to determine what security interests must be disclosed.

4(s) Limitations on rate information.

1. *Segregated disclosures.* A lease rate may not be included among the segregated disclosures referenced in § 213.3(a)(2).

Section 213.5—Renegotiations, Extensions and Assumptions

1. *Coverage.* Section 213.5 applies only to existing leases that are covered by the regulation. It therefore does not apply to the renegotiation or extension of leases with an initial term of four months or less, because such leases are not covered by the definition of consumer lease in § 213.2(e). Whether and when a lease is satisfied and replaced by a new lease is determined by state or other applicable law.

5(b) Extensions.

1. *Time of extension disclosures.* If a consumer lease is extended for a specified term greater than six months, new disclosures are required at the time the extension is agreed upon. If the lease is extended on a month-to-month basis and exceeds six months, new disclosures are required at the commencement of the seventh month and at the commencement of each seventh month thereafter. If a consumer lease is extended for several terms, one of which will exceed six months beyond the originally scheduled termination date of the lease, new disclosures are required at the commencement of the term that will exceed six months beyond the originally scheduled termination date.

2. *Content of disclosures for month-to-month extensions.* The disclosures for a lease extended on a month-to-month basis for more than six months should reflect the month-to-month nature of the transaction.

Section 213.7—Advertising

7(a) General rule.

1. *Persons covered.* All “persons” must comply with the advertising provisions in this section, not just those that meet the definition of a lessor in § 213.2(h). Thus, automobile dealers, merchants, and others who are not themselves lessors must comply with the advertising provisions of the regulation if they advertise consumer lease transactions. Pursuant to section 184(b) of the act, however, owners and personnel of the media in which an advertisement appears or through which it is disseminated are not subject to civil liability for violations under section 185(b) of the act.

2. *“Usually and customarily.”* Section 213.7(a) does not prohibit the advertising of a single item or the promotion of a new leasing program, but prohibits the advertising of terms that are not and will not be available. Thus, an advertisement may state terms that will be offered for only a limited period or terms that will become available at a future date.

7(b) Clear and conspicuous standard.

1. *Standard.* The disclosures in an advertisement must be reasonably

understandable. For example, very fine print in a television advertisement or detailed and very rapidly stated information in a radio advertisement does not meet the clear and conspicuous standard if consumers cannot see and read or comprehend the information required to be disclosed.

7(b)(1) Amount due at lease signing.

1. *Itemization not required.* The regulation requires only a total of amounts due at lease signing or delivery, not an itemization of its component parts. Such an itemization is provided in any transaction-specific disclosures provided under § 213.4.

2. *Prominence rule.* Except for a periodic payment, oral or written references to components of the total due at lease signing or delivery (for example, a reference to a capitalized cost reduction, where permitted) may not be more prominent than the disclosure of the total amount due at lease signing or delivery.

7(b)(2) Advertisement of a lease rate.

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be located in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not state a rate with an asterisk and make the disclosure in a different location in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement.

7(c) Catalogs and multi-page advertisements.

1. *General rule.* The multiple-page advertisements referred to in § 213.7(c) are advertisements consisting of a series of numbered pages—for example, a supplement to a newspaper. A mailing comprising several separate flyers or pieces of promotional material in a single envelope is not a single multiple-page advertisement.

2. *Cross-references.* A multiple-page advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule clearly stating sufficient information for the reader to determine the disclosures required under § 213.7(d)(2) (i) through (vi). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog or other multiple-page advertisement, the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.

7(d)(1) Triggering terms.

1. *Triggering terms.* When any triggering term appears in a lease advertisement, the additional terms enumerated in § 213.7(d)(2) (i) through (vi) must also appear. An example of one or more typical leases with a statement of all the terms applicable to each may be used. The additional terms must be disclosed even if the triggering term is not stated explicitly, but is readily determinable from the advertisement.

7(d)(2) Additional terms.

1. *Third-party fees that vary by state.* In disclosing the total amount due at lease signing a lessor may:

- i. Exclude third-party fees, such as taxes, license, and registration fees and disclose that fact; or
- ii. Provide a total that includes third-party fees based on a particular state as long as that fact and that fees may vary by state are disclosed.

7(e) Alternative disclosures—merchandise tags.

1. *Multiple item leases.* Multiple item leases that utilize merchandise tags requiring additional disclosures may use the alternate disclosure rule.

7(f) Alternative disclosures—television or radio advertisements.

7(f)(1) Toll-free number or print advertisement.

1. *Publication in general circulation.* A referral to a written advertisement appearing in a newspaper circulated nationally, for example, USA Today or the Wall Street Journal, may satisfy the general circulation requirement in § 213.7(f)(1)(ii).

2. *Toll-free number, local or collect calls.*

In complying with the disclosure requirements of § 213.7(f)(1)(i), a lessor must provide a toll-free number for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the phone charges.

3. *Multi-purpose number.* When calling an advertised toll-free number, if a consumer obtains a recording that provides several dialing options—such as providing directions to the lessor's place of business—the option allowing the consumer to request lease disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

4. *Statement accompanying toll free number.* Language must accompany a telephone number indicating that disclosures are available by calling the toll-free number, such as “call 1-800-000-000 for details about costs and terms.”

Section 213.8—Record Retention

1. *Manner of retaining evidence.* A lessor must retain evidence of having performed required actions and of having made required disclosures. Such records may be retained on microfilm, microfiche, or computer, or by any other method designed to reproduce records accurately, as well as paper form. The lessor need retain only enough information to reconstruct the required disclosures or other records.

Appendix A—Model Forms.

1. *Permissible changes.* Although use of the model forms is not required, lessors using them properly will be deemed to be in compliance with the regulation. Generally, lessors may make certain changes in the format or content of the forms and may delete any disclosures that are inapplicable to a transaction without losing the act's protection from liability. For example, the model form based on monthly periodic payments may be modified for single-

payment lease transactions or other periodic payments. The content, format, and headings for the segregated disclosures must be substantially similar to those contained in the model forms; therefore, any changes should be minimal. The changes to the model forms should not be so extensive as to affect the substance and the clarity of the disclosures.

2. Examples of acceptable changes.

- i. Using the first person, instead of the second person, in referring to the lessee.
- ii. Using "lessee," "lessor," or names instead of pronouns.
- iii. Rearranging the sequence of the nonsegregated disclosures.
- iv. Incorporating certain state "plain English" requirements.
- v. Deleting inapplicable disclosures by blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multi-purpose standard forms).
- vi. Adding language or symbols to indicate estimates.
- vii. Adding numeric or alphabetic designations.
- viii. Rearranging the disclosures into vertical columns, except for § 213.4(b) through (e) disclosures.

3. Model closed-end or net vehicle lease disclosure. Model A-2 is designed for a closed-end or net vehicle lease. Under the "Early Termination and Default" provision a reference to the lessee's right to an independent appraisal of the leased vehicle under § 213.4(l) is included for those closed-end leases in which the lessee's liability at early termination is based on the vehicle's estimated value.

4. Model furniture lease disclosures. Model A-3 is a closed-end lease disclosure statement designed for a typical furniture lease. It does not include a disclosure of the appraisal right at early termination required under § 213.4(l) because few closed-end furniture leases base the lessee's liability at early termination on the estimated value of the leased property. Of course, the disclosure should be added, if it is applicable.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 12, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97-3955 Filed 2-13-97; 2:20 pm]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-CE-40-AD]

RIN 2120-AA64

Airworthiness Directives; Grob Luft-und Raumfahrt, GmbH; Models G 109 and G 109B Sailplanes

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 Grob Luft-und Raumfahrt (Grob) Models G 109 and G 109B sailplanes. The proposed action would require inspecting the landing gear retaining bars and landing gear legs for proper radius, thickness, and cracking, and installing additional supportive parts or replacing the retaining bars and landing legs with parts of improved design. Reports of landing gear failure on certain G 109 and G 109B sailplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of the landing gear legs and possible loss of the sailplane.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-40-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 Grob Luft-und Raumfahrt, GmbH., D-8939, Mattsies-am Flugplatz, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6932; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-40-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. 96-CE-40-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob G 109 and G 109B sailplanes. The LBA reports that the landing gear on three of these sailplanes failed during landing. An investigation of these incidents revealed landing gear legs with fatigue cracks and weak retaining bars from an error in the manufacturing process. This condition, if not detected and corrected, could result in landing gear failure and possible loss of the sailplane.

Related Service Information

Grob has issued Service Bulletin TM 817-39, dated January 4, 1994, which specifies procedures for inspecting and modifying or replacing the landing gear retaining bars and the landing gear legs. The landing gear retaining bar should have a minimum radius of 3.0 millimeters (mm) on the chamfer. If the

radius is less than 3.0 mm, the retaining bar would be replaced with an improved retaining bar (part number (P/N) 109-5000.02) and a plastic reinforcing strip (P/N 109-5000.07). If the radius is 3.0 mm or greater, the plastic reinforcing strip would be glued onto the retaining bars.

The landing gear legs that are not marked with "0" (zero) would require inspecting for cracks by the magnetic particle or x-ray method, and if there are any cracks measuring greater than 0.5 mm, the landing gear legs would be replaced with new legs. If there are cracks measuring less than 0.5 mm, the proposed action would require polishing the cracks out, unless polishing would reduce the total leg thickness to less than 13.0 mm. If the leg thickness is less than 13.0 mm, the landing gear leg would be replaced. If there are no cracks in the landing gear legs, or the landing gear leg thickness is greater than 13.0 mm, after polishing, the proposed action would require repetitively inspecting until cracks are found, or until new landing gear legs are installed. Installing the improved landing gear legs and the improved retaining bars would terminate the proposed repetitive inspection.

The LBA classified this service bulletin as mandatory and issued AD 94-004/2 Grob, dated February 3, 1994, in order to ensure the continued airworthiness of these sailplanes in Germany.

FAA's Determination

These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information including the service information referenced above, 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 Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Grob G 109 and G 109B sailplanes of the same type design registered in the United States, the proposed AD would require:

(1) Inspecting the retaining bars chamfer for the correct radius, and

replacing the bars or reinforcing the bars, as applicable.

(2) Inspecting the landing gear legs that are not marked with "0" (zero) on the front of the legs for fatigue cracks, and if cracks are greater than or less than the tolerance measurement, either replace or repetitively inspect the landing gear legs, as applicable.

(3) Measure the total thickness of the landing gear legs. If they measure less than, greater than or equal to 13.0 mm, continue to inspect or replace legs with new improved legs, as applicable.

(4) Replacing the landing gear legs with parts of improved design would terminate the proposed repetitive inspections.

Cost Impact

The FAA estimates that 63 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per leg per sailplane to accomplish the inspection and modification on the proposed retaining bar action, approximately 9 workhours per leg per sailplane to accomplish the removal, inspection and re-installation, and approximately 6 workhours per leg to accomplish the replacement. The average labor rate is approximately \$60 an hour. Parts cost approximately \$90 per sailplane for retaining bars and \$1800 per sailplane for landing gear legs. The plastic strip for the retaining bar is provided by the manufacturer at no charge. Breaking these costs down by individual action, the estimated total cost for each action would be as follows:

- The proposed inspection and modification of the retaining bars would be \$210 (\$120/labor + \$90/parts) per sailplane or \$13,230 for the U.S. fleet.
- The proposed inspection and polishing of the landing gear legs would be \$540 per sailplane or \$34,020 for the U.S. fleet.
- The proposed replacement of the landing gear legs would be \$2,160 (\$360/labor + \$1,800/parts) per sailplane or \$136,080 for the U.S. fleet.
- The cost for the proposed repetitive inspections on the landing gear legs is not included in the above figures.

The manufacturer has informed the FAA that they have dispatched equipment to outfit approximately 30 sailplanes with new retaining bars, reducing the estimated cost impact of the retaining bars from \$13,230 to \$6,930. The manufacturer has also distributed approximately 3 sets of new landing gear legs, reducing the estimated total cost impact of the

landing gear leg replacement from \$136,080 to \$129,600.

Proposed Compliance Time

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition of the landing gear legs described by this AD is caused by corrosion. Corrosion initiates as a result of sailplane operation, but can continue to develop regardless of whether the sailplane is in service or in storage. Therefore, to ensure that the above-referenced condition is detected and corrected on all sailplanes within a reasonable period of time without inadvertently grounding any sailplanes, a compliance schedule based upon calendar time instead of hours TIS is required.

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 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Grob Luft-Und Raumfahrt, GMBH. (GROB):
Docket No. 96-CE-40-AD.

Applicability: Models G 109 and G 109B sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane 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 sailplanes 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 (e) 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 in the body of this AD, unless already accomplished.

To prevent failure of the landing gear legs and possible loss of the sailplane, accomplish the following:

(a) Within the next 120 calendar days after the effective date of this AD, inspect the retaining bars chamfer on both landing gear legs for a minimum of 3.0 millimeters (mm) radius in accordance with the "Actions" section, paragraph A3 in Grob Service Bulletin (SB) 817-39, dated January 4, 1994.

(1) If the chamfer radius is 3.0 mm or greater, prior to further flight, glue a reinforcing plastic strip (part number (P/N) 109-5000.07) to the retaining bar in accordance with the "Actions" section, paragraph A4 in Grob SB 817-39, dated January 4, 1994.

(2) If the chamfer radius is less than 3.0 mm, prior to further flight, replace with a new improved retaining bar (P/N 109-5000.02), and install the plastic strip (P/N 109-5000.07) in accordance with the "Actions" section, paragraph A5 in Grob SB 817-39, dated January 1994.

(b) For sailplanes not equipped with landing gear legs, P/N 109B-5001.01/1, within the next 2,000 sailplane landings or 1,000 hours TIS after the effective date, whichever occurs first, inspect the landing gear legs for cracks (using the magnetic particle or X-ray analysis method) in accordance with the "Actions" section, paragraph B9 in Grob SB 817-39, dated January 4, 1994.

Note 2: Landing gear legs (P/N 109B-5001.01/1) have a "0" stamped on the front side of the leg for easy identification.

(1) If there are cracks less than or equal to 0.5 mm, prior to further flight, polish the existing legs or replace the legs with P/N 109B-5001.01/1 in accordance with the "Actions" section, paragraph B10 in Grob SB 817-39, dated January 4, 1994.

(2) If the polished landing gear legs measures less than 13.0 mm, prior to further flight, replace the landing gear legs with P/N 109B-5001.01/1 in accordance with the "Actions" section, paragraph B10 in Grob SB 817-39, dated January 4, 1994.

(3) If no cracks are found, or the cracks are less than 0.5 mm, and the thickness of the landing gear legs is equal to or greater than 13.0 mm, repetitively inspect the landing gear legs for cracks every 1,000 landings or 500 hours TIS, whichever occurs first, in accordance with the "Actions" section, paragraph B12 in Grob SB 817-39, dated January 4, 1994.

(4) If during any of the repetitive inspections, the legs have previously been polished and new cracks are found, prior to further flight, replace the legs with P/N 109B-5001.01/1 in accordance with the "Actions" section, paragraph B12 in Grob SB 817-39, dated January 4, 1994.

(c) Replacement of the landing gear legs with P/N 109B-5000.01/1 terminates the repetitive inspections required by this AD and Grob SB 817-39, dated January 4, 1994.

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

(e) 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, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Grob Luft-und Raumfahrt, GmbH., D-8939, Mattsies-am Flugplatz, Germany or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 10, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3961 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-CE-69-AD]

RIN 2120-AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA-31, PA-31P, PA-31T, and PA-42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Recently, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) that applied to The New Piper Aircraft, Inc. (Piper) PA-31, PA-31P, and PA-31T series airplanes. The NPRM would have required incorporating a main landing gear (MLG) inboard door hinge and attachment angle assembly, part number (P/N) 47529-32, as terminating action for the repetitive inspection requirement of Airworthiness Directive (AD) 80-26-05. The Federal Aviation Administration (FAA) has received a comment to the NPRM that specifies fatigue cracking of the P/N 47529-32 MLG inboard door hinge and attachment angle assembly on the affected airplanes. The Federal Aviation Administration (FAA) reviewed manufacturer's service history and service difficulty reports in the FAA database associated with the P/N 47529-32 main landing gear hinge assembly, and has determined that more information and analysis are needed to propose any AD action. The purpose of this ANPRM is to seek comments from interested persons regarding the service history of P/N 47529-32 hinge assemblies. All comments will be evaluated by the FAA and the FAA will research the situation to decide whether additional rulemaking is needed.

DATES: Comments must be received by May 16, 1997.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-69-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.

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 any proposed rulemaking actions that may occur as a result of this ANPRM by submitting such written data or views 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 any proposed rulemaking is initiated.

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 document 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-69-AD." The postcard will be date stamped and returned to the commenter.

Availability of ANPRM

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-69-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA-31, PA-31-325, PA-31-350, PA-31P, PA-31T1, and PA-31T airplanes was published in the Federal Register as a notice of proposed rulemaking (NPRM) on December 7, 1995 (60 FR 62774). The action proposed to supersede AD 80-26-05, Amendment 39-3994, with a new AD that would (1) retain the requirement of repetitively inspecting the MLG inboard door hinges and attachment angles for cracks, and replacing any cracked MLG inboard door hinge or attachment angle; and (2) require incorporating a MLG inboard door hinge and attachment angle assembly of improved design (part number 47529-32) or FAA-approved hinges and angles made of steel as terminating action for the repetitive inspection requirement.

Accomplishment of the proposed inspections would be in accordance with Piper Service Bulletin (SB) No. 682, dated July 24, 1980.

Explanation of Comments Received

The comment received on the NPRM contained information that the improved hinge assemblies, part number (P/N) 47529-32, are also susceptible to fatigue cracking, and that installing this assembly should not eliminate the need for the repetitive inspections currently required by AD 80-26-05. The commenter states that its airplane fleet has experienced three failures and three incidents related to fatigue cracking of the P/N 47529-32 hinge assemblies.

The FAA conducted a review of the manufacturer's service history and service difficulty reports in the FAA database associated with the P/N 47529-32 main landing gear hinge assembly. Based on a review of this information, including the information received from the commenter, the FAA has determined that more information and analysis are needed before hinge assembly replacements are mandated through an AD as terminating action for the repetitive inspections currently required by AD 80-26-05.

FAA's Determination of the Best Action To Take

With the above information in mind, the FAA is issuing an advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision as to what course of rulemaking the FAA should take. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken regarding the P/N 47529-32 main landing gear hinge assembly. The FAA is especially interested in comments and viewpoints on the following:

1. What is the Model designation of your airplane, serial number, and total hours time-in-service (TIS)?
2. What P/N MLG inboard door hinge assemblies are installed in the airplane?
3. How many hours TIS are on the MLG inboard door hinge assemblies?
4. Have you ever had to replace a P/N 47529-32 MLG inboard door hinge assembly on the airplane? If so, what was the reason and approximately how many hours TIS were on each replaced assembly?

Additional Helpful Information

The following information shows the part numbers (P/N) for MLG inboard door hinge assemblies that each Piper

PA-31, PA-31P, PA-31T, and PA-42 series airplane was equipped with at manufacture:

Airplanes Equipped With Piper P/N 46653-00 (embossed forging number 46652)

Models PA-31, PA-31-300, and PA-31-325 airplanes, serial numbers 31-2 through 31-8012077;

Model PA-31-350 airplanes, serial numbers 31-5001 through 31-8052168;

Model PA-31P airplanes, serial numbers 31P-3 through 31P-7730012;

PA-31T airplanes, serial numbers 31T-7400002 through 31T-8020076; and

PA-31T1 airplanes, serial numbers 31T-7804001 through 31T-8004040.

Airplanes Equipped With Piper P/N 47529-32 (embossed forging number 46652-2)

Models PA-31, PA-31-300, and PA-31-325 airplanes, serial numbers 31-8012078 through 31-8312019;

Model PA-31-350 airplanes, serial numbers 31-8052169 through 31-8553002;

Model PA-31T airplanes, serial numbers 31T-8020077 through 31T-8120104;

Model PA-31T1 airplanes, serial numbers 31T-8004041 through 31T-8104073, 31T-8104101; 31T-8304001 through 31T-8304003; and 31T-1104004 through 31T-1104017;

Model PA-31T2 airplanes, serial numbers 31T-8166001 through 31T-8166076, and 31T-1166001 through 31T-1166008;

Model PA-31T3 airplanes, serial numbers 31T-8275001 through 31T-8475001, and 31T-5575001;

Model PA-31P-350 airplanes, serial numbers 31P-8414050;

Models PA-42 and PA-42-720 airplanes, serial numbers 42-7800001 through 42-8301002, and 42-5501003 through 42-5501060; and

Model PA-42-1000 airplanes, serial numbers 42-5527001 through 42-5527040.

Issued in Kansas City, Missouri, on February 11, 1997.

Henry A. Armstrong,
*Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 97-3959 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39**[Docket No. 96-CE-47-AD]****RIN 2120-AA64****Airworthiness Directives; Air Tractor Incorporated Models AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede AD 95-20-06, which currently requires inspecting the front spar attachment lugs and the rear spar for fatigue cracks and modifying the vertical fin if cracks are found. If no cracks are found, continue repetitively inspecting the area until cracks are found; and then incorporate the modification as a terminating action. The proposed action would retain the actions required in AD 95-20-06 for all Air Tractor models that have a 3/16-inch fin front spar fitting. Air Tractor models that are fitted with a 1/4-inch fin front spar fitting would not be required to accomplish this action. This action is prompted by two incident reports involving the failure of the front and rear spar attachment of the vertical fin. The actions specified by this AD are intended to prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

DATES: Comments must be received on or before April 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-CE-47-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 Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Bob May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone (817) 222-5156; facsimile (817) 222-5960.

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. 96-CE-47-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. 96-CE-47-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

It has been brought to the attention of the FAA that AD 95-20-06, which is applicable to Air Tractor Models AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes, should not have included models that are fitted with 1/4-inch thick fin front spar attach fittings. The current AD requires inspecting for cracks on all of the models referenced above, regardless of whether they have 1/4-inch or 3/16-inch thick front spar attachment fitting, and if no cracks are found, repetitively inspecting at different time intervals. The time interval would depend on the thickness of the fin front spar attach fitting on the airplane. If cracks are found, the current AD requires modifying the front spar

attachment. Since publication of AD 95-20-06, further investigation has revealed that the only Air Tractor models developing cracks are the models fitted with a 3/16-inch thick front spar attachment fitting. For this reason, the FAA is proposing to supersede the current AD to change the instructions of the AD.

Relevant Service Information

Air Tractor has issued a revised Service Letter (SL) No. 138, Revised August 7, 1996, which specifies procedures for inspecting, repetitively inspecting, and modifying the Air Tractor Models that have the 3/16-inch thick front spar attach fitting.

FAA's Determination

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 in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Air Tractor Incorporated Models AT-301, AT-302, AT-400, AT-400A, AT-401, AT-402, AT-501, and AT-502 airplanes of the same type design that are fitted with 3/16-inch thick front spar attachment fittings, the proposed AD would supersede AD 95-20-06 with a new AD that would require inspecting the fin front spar attach fitting lugs of models that have 3/16-inch thick fin front spar attach fittings for cracks and if cracks are found, prior to further flight, modifying the front spar attachment lugs. If no cracks are found, the proposed AD would require repetitively inspecting the front spar attachment lugs until cracks are found. Accomplishing the modification would terminate the repetitive inspections.

Cost Impact

The FAA estimates that 24 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. Parts cost approximately \$10 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$970 per airplane and

\$23,280 for the U.S. fleet. The FAA has no way of determining how many owners/operators of these affected airplanes have accomplished this action.

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 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95-20-06, Amendment 39-9384, and by adding a new AD to read as follows:

Air Tractor Incorporated: Docket No. 96-CE-47-AD; Supersedes AD 95-20-06, Amendment 39-9384.

Applicability: The following airplane models and serial numbers that have not accomplished the modification in Snow Engineering Company Report No. 138,

dated July 29, 1995, which is referenced in superseded AD 95-20-06, certificated in any category:

Note 1: The modification in Snow Engineering Company Report No. 138, dated July 29, 1995 and AD 95-20-06 required the airplanes to replace 3/16-inch thick fin front spar attach fittings with 1/4-inch thick fin front spar attach fittings.

Models	Serial Nos.
AT-301 and AT-401.	301-0261 through 301-0736, and 401-0662 through 401-0736 that have been converted to turbine powerplants and equipped with the all metal rudder, part number (P/N) 30456-1.
AT-302	All aircraft equipped with the all metal rudder, P/N 30456-1.
AT-400 and AT-400A.	All aircraft equipped with the all metal rudder, P/N 30456-1.
AT-402	402-0694 and 402-0695 through 402-0736.
AT-501	501-0002 through 501-0030 that have been converted to turbine powerplants and equipped with the all metal rudder, P/N 30456-1.
AT-502	502-0002 through 502-0030.

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 initially within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent in-flight vertical fin structural failure of the front spar attachments and eventually the rear spar attachment, which, if not detected and corrected, could result in loss of directional control and loss of control of the airplane, accomplish the following:

(a) Inspect the fin front spar attachment fittings for fatigue cracks in accordance with the INSTRUCTIONS section of the Snow Engineering Report (SER) number (No.) 138, Revised August 7, 1996.

(b) If no cracks are found during the initial inspection, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 25 hours TIS thereafter in accordance with the INSTRUCTIONS section of the SER No. 138, Revised August 7, 1996.

(c) If cracks are found during any inspections required by this AD, prior to

further flight, modify the fin front spar attachment fittings in accordance with the INSTRUCTIONS section of the SER No. 138, Revised August 7, 1996.

(d) Incorporating the modification specified in paragraph (c) of this AD is considered terminating action for the repetitive inspection requirements of this AD.

(e) 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.

(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, Fort Worth Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office. Alternative methods of compliance approved in accordance with AD 95-20-06 are considered approved as alternative methods of compliance for this AD.

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

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to Air Tractor Incorporated, P. O. Box 485, Olney, Texas 76374; 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.

(h) This amendment supersedes AD 95-20-06, Amendment 39-9384. Issued in Kansas City, Missouri, on February 10, 1997. Henry A. Armstrong, Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3958 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-144-AD]

RIN 2120-AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN-235 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 CASA Model CN-235 series airplanes. This proposal would require disabling the brake control valve of the

propeller. This proposal also would require that, prior to restoring propeller brake operation, the propeller brake control unit be replaced with a certain new propeller brake control unit. This proposal is prompted by reports of uncommanded activation of the propeller brake system on in-service airplanes during flight, due to the existing design of the brake control valve. The actions specified by the proposed AD are intended to prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-144-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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2799; 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-144-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-144-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Dirección General de Aviación (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on certain CASA Model CN-235, CN-235-100, and CN-235-200 series airplanes. The DGAC advises that it has received reports of uncommanded activation of the propeller brake system on CASA Model CN-235 series airplanes during flight. Investigation revealed that the existing design of the brake control valve of the propeller can cause such a malfunction, including failure of the low pressure warning system during ground operation. This condition, if not corrected, could result in the in-flight shutdown of an engine.

Explanation of Relevant Service Information

CASA has issued Communication COM 235-82, Revision 3, dated January 31, 1995, which describes procedures for disabling the brake control valve of the propeller.

CASA also has issued Service Bulletin SB-235-61-01, dated October 11, 1994, and Service Bulletin SB-235-61-01M, Revision 2, dated January 25, 1996 (for military airplanes). These service bulletins describe procedures for replacement of the propeller brake control unit, having part number (P/N) HP1410100-5 or HP1410100-7, with a new propeller brake control unit, having P/N HP1410100-9. This installation is to be performed prior to restoring propeller brake operation.

The DGAC classified these service bulletins as mandatory and issued Spanish airworthiness directive 01/94 R1, dated July 1995, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain 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 Requirements of 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 require, first, disabling the brake control valve of the propeller. Then, prior to restoring propeller brake operation, the proposed AD would require replacement of certain propeller brake control units with certain new propeller brake control units. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 2 CASA Model CN-235 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed disabling of the brake control valve, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be \$360, or \$180 per airplane.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be \$960, or \$480 per airplane.

The cost impact figures discussed above are 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 adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A., CASA: Docket 96–NM–144–AD.

Applicability: All Model CN–235, CN–235–100, and CN–235–200 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 (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 as indicated, unless accomplished previously.

To prevent in-flight uncommanded activation of the propeller brake system, which could result in in-flight shutdown of the engine, accomplish the following:

(a) Within 10 days after the effective date of this AD, disable the brake control valve of the propeller in accordance with Annex 1 of CASA Communication COM 235–82, Revision 3, dated January 31, 1995.

(b) Prior to restoring propeller brake operation, replace the propeller brake control unit having part number (P/N) HP1410100–5 or HP1410100–7, with a new propeller brake control unit having P/N HP1410100–9, in accordance with CASA Service Bulletin SB–235–61–01, dated October 11, 1994; or CASA Service Bulletin SB–235–61–01M, Revision 2 (for military airplanes), dated January 25, 1996; as applicable. Accomplishment of this replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) 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.

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

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3966 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 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 all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require performing a ram air turbine (RAT) extension test; removing and disassembling the RAT lever assembly; performing an inspection to detect corrosion of the RAT lever assembly, and replacement with a new assembly, if necessary; and cleaning all the parts of the RAT control shaft and its bearing component parts. This proposal is prompted by reports indicating that the RAT did not extend during ground testing, due to corrosion in the uplock pin/shaft and the needle bearing of the RAT. The actions specified by the proposed AD are intended to detect and correct such corrosion of the RAT, which could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–155–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 96-NM-155-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-155-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300-600 series airplanes. The DGAC advises that it has received reports indicating that the ram air turbine (RAT) did not extend during ground tests. Investigation revealed that the non-extension of the RAT was due to corrosion of the RAT control shaft and its bearing needles between the uplock unit and the lever connected to the control linkage. Corrosion of the RAT uplock pin/shaft and needle, if not detected and corrected in a timely manner, could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300-29-0108 (for Model A300 series airplanes), Service Bulletin A310-29-2076 (for Model A310 series airplanes), and Service Bulletin A300-29-6037 (for Model A300-600 series airplanes), all dated April 1, 1996, which describe procedures for the following:

1. Performing a RAT extension test during ground testing;
2. Removing and disassembling the RAT lever assembly (uplock assembly);
3. Performing a visual inspection to detect corrosion of the RAT lever assembly; and
4. Cleaning all the parts of the RAT lever assembly and all its associated parts.

The service bulletins also describe procedures for replacing any corroded parts with new parts. They also describe procedures for cleaning and lubricating corroded parts in lieu of replacement with new parts, in situations where new parts are not readily available.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive, 95-163-182(B)R2, dated June 5, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the 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 Requirements of 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 require a RAT extension test during ground testing; removal and disassembly of the RAT lever assembly; a visual inspection to detect corrosion of the RAT lever assembly, and replacement of the assembly with new parts, if necessary; and cleaning of the lever assembly and its associated parts. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Differences Between Proposed AD and Referenced Service Bulletins

Operators should note that, although the Airbus service bulletins describe certain cleaning and lubrication procedures of the RAT lever assembly that can be accomplished in lieu of

replacement of corroded parts, this proposed AD would not permit those actions as an alternative to replacement. The FAA finds that, to ensure an adequate level of safety for the affected fleet, corroded parts must be replaced prior to further flight. The FAA has determined that, in cases where known unsafe conditions exist and where actions to detect and correct those unsafe conditions can be readily accomplished, those actions must be required.

Interim Action

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

Cost Impact

The FAA estimates that 80 Airbus Model A300, A310, and A300-600 series 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 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 \$48,000, 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Airbus Industrie: Docket 96–NM–155–AD.

Applicability: All Model A300, A310, and A300–600 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 (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 as indicated, unless accomplished previously.

To detect and correct corrosion of the ram air turbine (RAT) uplock pin/shaft and needle that could result in failure of the RAT to deploy and subsequent loss of emergency hydraulic power to the flight controls in the event that power is lost in both engines, accomplish the following:

(a) Prior to the accumulation of 30 months total time-in-service, or within 3 months after the effective date of this AD, whichever occurs later: Accomplish the requirements of paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD in accordance with Airbus Service Bulletin A300–29–0108, dated April 1, 1996 (for Model A300 series airplanes); A310–29–2076, dated April 1, 1996 (for Model A310 series airplanes); A300–29–6037, dated April 1, 1996 (for Model A300–600 series airplanes); as applicable. Thereafter, repeat these actions at intervals not to exceed 30 months.

(1) Perform a RAT extension test on the ground, in accordance with the procedures specified in the Maintenance Manual.

(2) Disassemble and remove the lever assembly of the RAT and perform a visual inspection of the lever assembly to detect corrosion, in accordance with the applicable service bulletin.

(i) If no corrosion is detected: Prior to further flight, clean and lubricate the lever assembly and its associated parts, reinstall the assembly, and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin.

(ii) If any corrosion is detected in any part of the lever assembly: Prior to further flight, replace the lever assembly with a new part and perform a retraction/extension/retraction of the RAT, in accordance with the applicable service bulletin.

(b) Initial accomplishment of the actions required by paragraph (a) of this AD that have been performed in accordance with Airbus All Operator Telex (AOT) 29–16, Revision 01, dated January 10, 1996, is considered acceptable for compliance with the initial RAT extension test and an initial visual inspection as required by paragraph (a) of this AD. However, the first repetitive inspection, as required by paragraph (a) of this AD, must be performed within 30 months after that RAT extension test and visual inspection were conducted, and repeated thereafter at intervals not to exceed 30 months.

(c) 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.

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

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3965 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 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 CASA Model CN–235 series airplanes. This proposal would require replacement of the guide hooks of the cargo doors with new, improved guide hooks. This proposal is prompted by fatigue cracking found in the guide hooks of the cargo door. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–138–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 Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; 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-138-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-138-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on certain CASA CN-235 series airplanes. The DGAC advises that, during full-scale fatigue tests on a Model CN-235 test article, cracking was found in the guide hooks of the cargo door. Such cracking is attributed to fatigue-related stress. Fatigue-related cracking in the guide hooks of the cargo door, if not detected and corrected in a timely manner, could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB-235-52-23, Revision 2, dated June 9, 1994, and Service Bulletin SB-235-52-23M, dated March 17, 1994. These service bulletins describe procedures for replacement of the guide hooks of the cargo doors with new, improved guide hooks. The replacement improves the fatigue life of the cargo doors. The DGAC classified these service bulletins as mandatory and issued Spanish

airworthiness directive 02/94, dated August 1994, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

This airplane model is manufactured in Spain 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 Requirements of 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 require replacement of the guide hooks of the cargo doors with new, improved guide hooks. The actions would be required to be accomplished in accordance with the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 150 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 \$6,100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$15,100 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A., CASA: Docket 96-NM-138-AD.

Applicability: Model CN-235 series airplanes, as listed in CASA Service Bulletin SB-235-52-23, Revision 2, dated June 9, 1994, and CASA Service Bulletin SB-235-52-23M, dated March 17, 1994; 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 fatigue-related cracking in the guide hooks of the cargo door, which could result in reduced structural integrity of the cargo door and, consequently, lead to rapid decompression of the airplane, accomplish the following:

(a) Replace the guide hooks of the cargo doors with new, improved guide hooks, in accordance with CASA Service Bulletin SB-235-52-23, Revision 2, dated June 9, 1994, or CASA Service Bulletin SB-235-52-23M, dated March 17, 1994; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with CASA Service Bulletin SB-235-52-23, dated June 16, 1993, or Revision 1, dated April 13, 1994, are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) For airplanes listed in CASA Service Bulletin SB-235-52-23: Replace prior to the accumulation of 17,000 total landings.

(2) For airplanes listed in CASA Service Bulletin SB-235-52-23M: Replace prior to the accumulation of 15,000 total landings.

(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 February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3968 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-141-AD]

RIN 2120-AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 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 Aerospatiale Model ATR42 and ATR72 series airplanes. This proposal would require modification of the handle of the passenger/crew door to change the "down-to-open" configuration of the handle to an "up-to-open" configuration. This proposal is prompted by a report indicating that, immediately after takeoff, the passenger/crew door opened and separated from the airplane, due to the inadvertent operation of the door handle. The actions specified by the proposed AD are intended to prevent inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the door during an emergency evacuation.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-141-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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; 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-141-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-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report indicating that, immediately after takeoff, a passenger/crew door separated from an Aerospatiale Model ATR72 series airplane. Investigation revealed that the door may have separated from the airplane due to inadvertent operation of the door handle. That passenger/crew door had been modified (Aerospatiale Modification 04019) to change the normal closing position ("down-to-lock") to a "down-to-open" configuration. Consequently, the FAA reviewed the operation of the door handle in the "down-to-open" configuration and has determined that the reversed direction of operation of a handle in this configuration may cause confusion during an emergency evacuation. Additionally, the normal "up-to-open" motion of a handle requires that deliberate action be taken to open the passenger/crew door, while the "down-to-open" motion of a door handle could permit inadvertent opening of the door by a person leaning or falling on the handle while the airplane is flying unpressurized. (Normal cabin pressurization during flight will prevent operation of the door handle.)

The "reversed" configuration of the door handle, described above, could result in the inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the door during an emergency evacuation.

The configuration and operation of the handle of the passenger/crew door in Aerospatiale Model ATR72 series airplanes are similar in design to those

installed on the Aerospatiale Model ATR42 series airplanes; therefore, both of those models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

Aerospatiale has released two Aerospatiale Service Bulletins ATR42-52-0072 and ATR72-52-1040, both dated October 2, 1995, which describe procedures for modifying the "down-to-open" configuration of the handle of the passenger/crew door to an "up-to-open" configuration. If the airplane is flying unpressurized, this modification will prevent inadvertent opening of the door in flight by a person leaning or falling on the handle and, during an emergency evacuation, will eliminate any confusion concerning the direction in which the handle moves to an open position.

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of 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 require modification of the handle of the passenger/crew door to change the "down-to-open" configuration to an "up-to-open" configuration. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 16 Aerospatiale Model ATR42 and ATR72 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$14,400, or \$900 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 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Aerospatiale: Docket 96-NM-141-AD.

Applicability: Model ATR42 and ATR72 series airplanes on which Aerospatiale Modification 04019 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 inadvertent opening of the passenger/crew door during unpressurized flight, or delays in opening the passenger/crew door during an emergency evacuation; accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the handle of the passenger/crew door by changing its configuration to an up-to-open configuration in accordance with Aerospatiale Service Bulletin ATR42-52-0072 (for Model ATR42 series airplanes), or ATR72-52-1040 (for Model ATR72 series airplanes), both dated October 2, 1995.

(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 February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3967 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-96-AD]

RIN 2120-AA64

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd. Model 1125 Westwind Astra 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 IAI Model 1125 Westwind Astra series airplanes. This proposal would require repetitive inspections to detect loose or damaged rivets that fasten a certain support beam to the frame of the fuselage; and modification of the attachment between the support beam and fuselage by installation of additional fasteners, if necessary. This proposal also would require the eventual accomplishment of this modification on all airplanes, which would terminate the repetitive inspections. This proposal is prompted by reports indicating that the attachment between this beam and the fuselage has become loose on several airplanes. Movement of this beam could restrict the movement of the elevator and rudder controls cab that run through the bellcranks attached to it. The actions specified by the proposed AD are intended to prevent movement of this beam, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane.

DATES: Comments must be received by March 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-96-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 Technical Publications, Astra Jet Corporation, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; 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-96-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-96-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain IAI Model 1125 Westwind Astra series airplanes. The CAAI advises that it has received reports indicating that rivets fastening the support beam to the fuselage frame at station 452.00 have become loose on several Model 1125 Westwind Astra series airplanes. Should these rivets loosen where the beam attaches to the frame, the beam could move. Because the elevator and rudder controls run through bellcranks that are connected to this beam, movement of this beam could restrict the movement of these controls. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Astra Jet has issued Service Bulletin SB 1125-53-135, dated April 26, 1995, which describes procedures for repetitive visual inspections of the rivets fastening the support beam to the fuselage frame at station 452.00; these inspections are to detect any rivet that is loose or has been damaged by the

relative movement of the rivet against the support beam (a "fretted rivet"). This service bulletin also describes procedures for modifying the attachment between the beam and the fuselage by the installation of additional fasteners that will strengthen this attachment. Accomplishment of this modification eliminates the need for repetitive inspections. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 95-34, dated May 18, 1995, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

This airplane model is manufactured in Israel 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 CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, 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 Requirements of 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 require repetitive visual inspections to detect loose or fretted rivets that fasten the support beam to the fuselage frame at station 452.00. Should any loose or fretted rivet be detected, the proposed AD would require modification of the attachment between the beam and the fuselage by the installation of additional fasteners. Additionally, this proposed AD would require that this modification be installed eventually on all affected airplanes. Accomplishment of this modification also would terminate the requirement for repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 58 IAI Model 1125 Westwind Astra series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, and the average labor rate is \$60 per work hour.

Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be \$3,480, or \$60 per airplane, per inspection.

It would take approximately 8 work hours per airplane to accomplish the proposed terminating modification, and the average labor rate is \$60 per work hour. The cost of parts is minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$27,840, or \$480 per airplane.

The cost impact figures discussed above are 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 adding the following new airworthiness directive:

Israel Aircraft Industries (IAI), Ltd.: Docket 96-NM-96-AD.

Applicability: Model 1125 Westwind Astra series airplanes as listed in IAI Service Bulletin SB 1125-53-135, dated April 26, 1995; 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 (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 as indicated, unless accomplished previously.

To prevent movement of the support beam attached to the fuselage frame at station 452.00, which could restrict movement of the elevator and rudder controls, and consequently lead to reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, conduct a visual inspection to detect loose or damaged ("fretted") rivets that fasten the support beam to the fuselage frame at station 452.000, in accordance with Part A of IAI Service Bulletin SB 1125-53-135, dated April 26, 1995.

(1) If no loose or fretted rivet is detected, repeat this inspection thereafter at intervals not to exceed 250 hours time-in-service until the modification required by paragraph (b) of this AD is accomplished.

(2) If any loose or fretted rivet is detected, prior to further flight, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125-53-135, dated April 26, 1995. After this modification is accomplished, no further action is required by paragraphs (a) or (b) of this AD.

(b) Within 500 hours time-in-service after the effective date of this AD, modify the support beam in accordance with Part B of IAI Service Bulletin SB 1125-53-135, dated April 26, 1995. Accomplishment of this modification constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(c) 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.

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

Issued in Renton, Washington, on February 11, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-3969 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-ANE-38]

RIN 2120-AA64

Airworthiness Directives; General Electric Aircraft Engines CF700 Series Turbofan 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 General Electric Aircraft Engines (GE) CF700 series turbofan engines. This proposal would require replacement of existing fan guards with new, improved fan guards. This proposal is prompted by a report of uncontained fan blades which separated from the engine during an overspeed. The actions specified by the proposed AD are intended to prevent an overspeed of the aft fan disk from resulting in an uncontained engine failure and damage to the aircraft.

DATES: Comments must be received by March 21, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-38, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GE Aircraft Engines, 1000 Western Ave., Lynn, MA 01910; telephone (617) 594-3140, fax (617) 594-4805. This information may be examined at the

FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7139, fax (617) 238-7199.

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 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-ANE-38." 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, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96-ANE-38, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Federal Aviation Administration (FAA) received a report of uncontained fan blades on a General Electric Aircraft Engines (GE) CF700 series turbofan engine installed on a Marcel Avions Dassault Falcon 20 aircraft. During takeoff, the aircraft encountered a flock

of birds that were ingested into the engine, which removed enough fan blades to unload the aft fan and allow the undamaged core rotor to overspeed the fan disk. This overspeed resulted in the release of fan blades, which penetrated the aircraft fuselage, resulting in an engine and aircraft fire. This condition, if not corrected, would allow an overspeed of the aft fan disk to result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE Service Bulletin (SB) No. (CF700) 72-154, dated December 20, 1996, that describes procedures for replacement of existing fan guards with new, improved fan guards.

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, within two years after the effective date of this AD, replacement of existing fan guards with new, improved fan guards. This calendar end-date was determined based upon parts availability and risk analysis. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 826 engines of the affected design in the worldwide fleet. The FAA estimates that 414 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$50,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$21,196,800.

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 fm 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:

General Electric Aircraft Engines: Docket No. 96-ANE-38.

Applicability: General Electric Aircraft Engines (GE) CF700 series turbofan engines, installed on but not limited to Marcel Avions Dassault Falcon 20, and Sabreliner NA265 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 an overspeed of the aft fan disk from resulting in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace existing fan guards with new, improved fan guards, in accordance with GE Service Bulletin (SB) No. (CF700) 72-154, dated December 20, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be

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

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

(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 aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on February 4, 1997.

Jay J. Pardee,

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

[FR Doc. 97-4013 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 97-AGL-6]

Modification of Class E Airspace; Spearfish, SD, Black Hills-Clyde Ice Field

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Spearfish, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 12 has been developed for Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before April 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-6, 2300 East Devon Avenue, Des Plaines, Illinois, 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

John A. Clayborn, Air Traffic Division, Operations Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Spearfish, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 12 SIAP at Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth published in paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designation and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AGL SD E5 Spearfish, SD [Revised]

Black Hills-Clyde Ice Field, SD
(lat. 44°28'49"N, long. 103°46'37"W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Black Hills-Clyde Ice Field Airport and within 2.1 miles each side of the 305° bearing from the airport extending from the 7-mile radius to 8.3 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 44°29'22"N, long. 103°56'48"W; to lat. 44°13'37"N, long. 104°14'00"W; to lat. 44°18'41"N, long. 104°23'24"W; to lat. 44°44'11"N, long. 103°57'49"W; to lat. 44°50'13"N, long. 103°28'11"W; to lat. 44°47'27"N, long. 102°57'40"W; to lat. 44°39'31"N, long. 102°56'34"W; to lat. 44°38'27"N, long. 103°12'26"W; to lat. 44°25'29"N, long. 103°38'30"W; then clockwise via the 7-mile radius of the airport to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on February 5, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–4073 Filed 2–18–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
21 CFR Ch. I

[Docket No. 96N–0364]

RIN 0910–AA20

**Regulation of Medical Foods;
Extension of Comment Period**

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to April 28, 1997, the comment period for the advance notice of proposed rulemaking for the regulation of medical foods that published in the Federal Register of November 29, 1996. This action is being taken in response to several requests from interested persons for an extension of the comment period on this document.

DATES: Written comments by April 28, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Robert J. Moore, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4605.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 29, 1996 (61 FR 60661), FDA published an advance notice of proposed rulemaking for the regulation of medical foods. Interested persons were given until February 27, 1997, to comment on the advance notice of proposed rulemaking.

FDA has received requests for an extension of the comment period from: Manufacturers, a trade organization representing manufacturers of medical foods, and a professional society representing health care providers and research scientists. The interested parties stated in their requests for an extension of the comment period that such an extension would help ensure that the agency receives comprehensive and carefully researched information from experts to consider in response to the notice. After careful consideration of the requests submitted to the agency, FDA has decided to grant an extension of the comment period until April 28, 1997.

Interested persons may, on or before April 28, 1997, submit to the Dockets Management Branch (address above) written comments regarding this advanced notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under sections 4, 5, and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); sections 201, 301, 402, 403, 404, 405, 409, 411, 412, 501, 502, 503, 505,

and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 344, 345, 348, 350, 350a, 351, 352, 353, 355, 371); and 21 U.S.C. 360ee(b)(3) (section 5(b)(3) of the Orphan Drug Amendments of 1988, as amended by Pub. L. 100–290).

Dated: February 12, 1997.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 97–4021 Filed 2–18–97; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 808

[Docket No. 96N–0249]

RIN 0910–AB03

Exemption From Preemption of State and Local Cigarette and Smokeless Tobacco Requirements; Applications for Exemption Submitted by Various State Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (the act) preempts State and local device requirements that are different from, or in addition to, Federal requirements under the act. The act also provides that the Food and Drug Administration (FDA) may, by regulation, exempt State and local device requirements from preemption. FDA is responding to applications for exemption submitted by the States of Alabama, Alaska, Utah, and Washington. FDA is proposing to grant exemptions from Federal preemption for certain cigarette and smokeless tobacco requirements in the States of Alabama, Alaska, and Utah. The requirements in the State of Washington are not preempted, and therefore no exemption needs to be granted. Elsewhere in this issue of the Federal Register, FDA is announcing an opportunity for interested persons to request a public hearing on the proposed regulation.

DATES: Written comments by March 21, 1997. FDA proposes that any final rule that may be issued based on this proposal become effective 30 days after the date of its publication in the Federal Register.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Anne M. Kirchner, Office of Policy (HF–23), Food and Drug Administration,

5600 Fishers Lane, Rockville, MD 20857, 301-827-5321.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 28, 1996 (61 FR 44396), FDA published a final rule (the tobacco rule) restricting the sale and distribution of nicotine-containing cigarettes and smokeless tobacco in order to protect children and adolescents. The tobacco rule included provisions prohibiting retailers from selling nicotine-containing cigarettes or smokeless tobacco to any person younger than 18 years of age (see § 897.14(a) (21 CFR 897.14(a))) and requiring retailers to verify, by means of photographic identification containing the bearer's date of birth, that no person purchasing cigarettes or smokeless tobacco is younger than 18 years of age (see § 897.14(b)). The age verification requirement applies except where the purchaser is over age 26.

Section 521(a) of the act (21 U.S.C. 360k(a)) provides that,

[a]fter May 28, 1976, no State or political subdivision of a State may establish or continue in effect, with respect to a device intended for human use, any requirement having the force and effect of law (whether established by statute, ordinance, regulation, or court decision), which is different from, or in addition to, any requirement applicable to such device under any provision of the act and which relates to the device's safety or effectiveness, or to any other matter included in a requirement applicable under the act (§ 808.1(b)(21 CFR 808.1(b))). Because FDA is regulating cigarettes and smokeless tobacco as nicotine-delivery devices under the act, any State or local cigarette or smokeless tobacco requirement that is different from, or in addition to, the specific requirements for cigarettes and smokeless tobacco established under the tobacco rule is preempted under section 521(a) of the act.

In implementing section 521(a) of the act, FDA has historically interpreted that provision narrowly and found it to have preemptive effect only for those State and local requirements that in fact clearly impose specific requirements with respect to specific devices that are manifestly in addition to analogous Federal requirements. Consistent with this narrow scope of preemption under section 521(a) of the act, a State or local requirement that is narrower in coverage than the Federal requirement is not preempted to the extent that it is similar to the Federal requirement.

Examples of such similar, yet narrower, coverage by State or local requirements include additional statutory elements or defenses in conjunction with minimum age

restrictions on sales of cigarettes and smokeless tobacco. For instance, numerous States have statutes that prohibit retailers from "negligently" or "knowingly" selling cigarettes or smokeless tobacco to persons under the age of 18. Other States have fashioned their age prohibition statutes such that retailers can assert as a defense to any penalties that they properly checked and relied upon an identification presented by an underage purchaser.

Such statutes are narrower in scope than the strict liability provision of the tobacco rule because they require proving a retailer's negligence or knowledge in an underage sale. However, because these statutes are similar to the tobacco rule's prohibition of sales to persons under the age of 18, they are not preempted merely because of their narrower coverage. A State or local government clearly could choose to have no statute whatsoever in effect regarding age restrictions. FDA believes it logically follows that a State or local government may enact a statutory level of enforcement that falls somewhere between the level of no enforcement and the level implemented in the tobacco rule.

The narrow preemption in these situations is based on the Supreme Court's recent decision in *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240 (1996). The Court held that common law tort claims that are similar to, but narrower than, FDA requirements are not preempted under section 521 of the act. (See *Lohr*, 116 S. Ct. at 2255.) In so holding, the Court reasoned as follows:

Nothing in [section 521] denies [a State] the right to provide a traditional damages remedy for violations of common-law duties when those duties parallel federal requirements. Even if it may be necessary as a matter of [State] law to prove that those violations were the result of negligent conduct, or that they created an unreasonable hazard for users of the product, such additional elements of the state-law cause of action would make the state requirements narrower, not broader, than the federal requirement. While such a narrower requirement might be "different from" the federal rules in a literal sense, such a difference would surely provide a strange reason for finding pre-emption of a state rule insofar as it duplicates the federal rule. *Id.*

Section 521(b) of the act provides that FDA may, upon application by a State or political subdivision, and by regulation issued after notice and an opportunity for an oral hearing, exempt a State or local device requirement from preemption under such conditions as FDA may prescribe if the requirement is: (1) More stringent than an FDA requirement applicable to the device, or

(2) required by compelling local conditions, and compliance with it would not cause the device to be in violation of any applicable requirement under the act.

In the Federal Register of November 7, 1996 (61 FR 57685), FDA published a notice (the exemption notice) inviting State and local governments to file applications for exemption from preemption for cigarette and smokeless tobacco requirements. In order to facilitate and expedite review of submitted applications, FDA is considering the applications in two separate groups, which are based on the effective dates for different requirements under the tobacco rule. This proposed rule covers those applications, designated in the exemption notice as Group 1, which are for State and local requirements that are different from, or in addition to, FDA requirements under § 897.14(a) and (b) of the tobacco rule. (See 61 FR 57685 at 57686.) Applications for other State and local requirements pertaining to cigarettes and smokeless tobacco will be considered in another proposed rule which will be published in the future.

II. Descriptions of the Requests for Exemption from Preemption

A. State of Alabama

On October 28, 1996, the State of Alabama applied for exemption from preemption for section 13A-12-3 of the Alabama Code. The provision reads as follows:

§ 13A-12-3. Selling cigarettes to minors.

Any person who sells, barter, exchanges or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them shall, on conviction, be fined not less than \$10.00 nor more than \$50.00 and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than 30 days.

Section 26-1-1 of the Alabama Code establishes age 19 as the age of majority.¹ Consequently, section 13A-

¹ The text of section 26-1-1 of the Alabama Code is as follows:

§ 26-1-1. Age of majority designated as 19 years.

(a) Any person in this state, at the arrival at the age of 19 years, shall be relieved of his disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age. No law of this state shall discriminate for or against any person between and including the ages of 19 and 21 years solely on the basis of age.

(b) This section shall also apply to any person who arrived at the age of 19 and 20 years before July 22, 1975, but shall not abrogate any defense or abridge any remedy available to him prior to such date.

(c) All laws or parts of laws which read "under the age of 21 years" hereafter shall read "under the age of 19 years." Wherever the words "under the age of 21 years" appear in any law limiting the legal rights and abilities of persons under such age, such

12-3 of Alabama Code, when interpreted in light of section 26-1-1 of Alabama Code, prohibits, in part, any person from selling, bartering, exchanging, or giving cigarettes, cigarette tobacco or cigarette paper, or any substitute to persons under 19 years of age in Alabama.

The prohibition under section 13A-12-3 of the Alabama Code against selling, bartering, or exchanging tobacco products to anyone under 19 years of age is different from the age restriction contained in the tobacco rule at § 897.14(a), which prohibits sales of cigarettes and smokeless tobacco to anyone under age 18.² FDA believes, however, that Alabama's higher minimum age for the sale, barter, and exchange of cigarette and smokeless tobacco will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on the sale, barter, and exchange of tobacco products found in section 13A-12-3 of the Alabama Code is preempted, FDA is proposing to grant an exemption from preemption.

In addition, section 13A-12-3 of the Alabama Code prohibits giving cigarettes, cigarette tobacco or cigarette paper, or any substitute to anyone under the age of 19. Because the restriction on distribution of tobacco products found in section 13A-12-3 of the Alabama Code does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 13A-12-3 of the Alabama Code is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established in the tobacco rule under § 897.16(d) (21 CFR 897.16(d)).³ Despite its narrower scope of coverage, this portion of the

words shall be construed to mean under the age of 19 years.

(d) Notwithstanding the provisions of subsection (c) of this section, nothing in this section shall be deemed to repeal any provision of Chapter 19 of Title 15 of this Code.

² Under § 897.14(a), "[n]o retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age." This prohibition on "selling" cigarettes or smokeless tobacco extends to transactions involving "bartering" or "exchanging" these products for other items that ultimately have some value.

³ Although the focus of this proposed rule is upon requests for exemption from preemption with respect to the requirements of § 897.14(a) (involving retail sales) and § 897.14(b) (involving verification of purchaser's age), section 13A-12-3 of the Alabama Code also contains distribution restrictions that are analogous to those restrictions found in § 897.16(d) (involving free distribution). For reasons of expediency, FDA will address the issue of preemption of section 13A-12-3 of the Alabama Code, in that section's entirety, in this rulemaking.

statute is not preempted because it is similar to the tobacco rule's restrictions on the distribution of free samples of cigarette and smokeless tobacco. FDA notes, however, that the narrower scope of coverage at the State level in Alabama as established under section 13A-12-3 of the Alabama Code in no way narrows or limits the scope of coverage of Federal requirements contained in the tobacco rule.

Finally, to the extent that section 13A-12-3 of the Alabama Code applies to products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco.

B. State of Alaska

On November 27, 1996, the State of Alaska applied for an exemption from preemption for sections 11.76.100 and 11.76.105 of the Alaska Statutes. The request, in part, concerned Alaska's prohibition against selling, exchanging, or giving cigarettes, cigars, tobacco, or tobacco-containing products to persons under age 19, as well as its prohibition against the possession of cigarettes, cigars, tobacco, or tobacco-containing products by persons under age 19. The relevant provisions of section 11.76.100 of the Alaska Statutes read as follows:

Sec. 11.76.100. Selling or giving tobacco to a minor.

(a) A person commits the offense of selling or giving tobacco to a minor if the person is 19 years of age or older and

(1) negligently sells, exchanges, or gives a cigarette, a cigar, tobacco, or a product containing tobacco to a person under 19 years of age;

* * * * *

(f) The provisions of (a) of this section do not apply to a person who sells or gives tobacco to a minor if the minor is a prisoner at an adult correctional facility.

The prohibition under section 11.76.100(a) of the Alaska Statutes against selling or exchanging tobacco to anyone under 19 years of age is different from the age restriction contained in § 897.14(a), which prohibits sales of cigarettes and smokeless tobacco to anyone under age 18.⁵ FDA believes,

⁴ The remaining portions of section 11.76.100 of the Alaska Statutes for which Alaska seeks exemption from preemption concern vending machine sales. FDA will address the vending machine sales portions of section 11.76.100 of the Alaska Statutes in a future proposed rulemaking.

⁵ Under § 897.14(a), "[n]o retailer may sell cigarettes or smokeless tobacco to any person younger than 18 years of age." This prohibition on "selling" cigarettes or smokeless tobacco extends to transactions involving "exchanging" these products for other items that ultimately have some value.

however, that Alaska's higher minimum age for the sale and exchange of cigarettes and smokeless tobacco will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in section 11.76.100(a) of the Alaska Statutes is preempted, FDA is proposing to grant an exemption from preemption.

Section 11.76.100(a) of the Alaska Statutes also prohibits giving tobacco products to anyone under the age of 19. Because the restriction on distribution of tobacco products found in section 11.76.100(a) of the Alaska Statutes does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 11.76.100(a) of the Alaska Statutes is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d) of the tobacco rule.⁶ Although section 11.76.100(a) of the Alaska Statutes has a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, this portion of the statute is not preempted because it is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Alaska as established under section 11.76.100(a) of the Alaska Statutes does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

Because section 11.76.100(a) of the Alaska Statutes prohibits the "negligent" selling or giving of tobacco to a minor, that section is narrower in scope than the strict liability provisions found in the tobacco rule. However, because section 11.76.100(a) of the Alaska Statutes is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco sales and distribution, the statute is not preempted merely because of its narrower coverage. As stated above, the narrower coverage of section 11.76.100(a) of the Alaska Statutes does not narrow or limit the scope of Federal coverage under the tobacco rule.

To the extent that section 11.76.100(a) of the Alaska Statutes applies to

⁶ Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco, and verification of purchaser's age, FDA will also address the issue of preemption of the age restrictions on distribution of tobacco products found in section 11.76.100(a) of the Alaska Statutes.

products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco.

Section 11.76.100(f) of the Alaska Statutes is not preempted by section 521 of the act. Section 11.76.100(f) of the Alaska Statutes provides an exception to the State's prohibition of underage sales and distribution of tobacco products. Under this exception a person may "sell[] or give[] tobacco to a minor if the minor is a prisoner at an adult correctional facility."

This exception is narrower in scope of coverage than the Federal prohibitions found in §§ 897.14(a) and 897.16(d). Clearly, the Alaskan State legislature could have chosen not to enact any prohibitions whatsoever regarding underage sales and distribution of tobacco products. The level of prohibition actually enacted, however, falls between a no-prohibition level and the level of enforcement at the Federal level under the tobacco rule.

Despite the narrower scope of section 11.76.100(f) of the Alaska Statutes, the statute is not preempted because the State's prohibition of underage sales and distribution of tobacco products is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco sales and distribution. However, the narrower coverage of section 11.76.100(f) of the Alaska Statutes does not narrow or limit the scope of Federal coverage under the tobacco rule; thus, for example, the sale of cigarettes or smokeless tobacco to any person under the age of 18, including such a person who is a prisoner at an adult correctional facility, would violate the prohibitions contained in the tobacco rule.

The State of Alaska has also applied for exemption from preemption for section 11.76.105 of the Alaska Statutes. The relevant provisions of section 11.76.105 of the Alaska Statutes read as follows:

Sec. 11.76.105. Possession of tobacco by a minor.

(a) A person under 19 years of age may not knowingly possess a cigarette, a cigar, tobacco, or a product containing tobacco in this state. This subsection does not apply to a person who is a prisoner at an adult correctional facility.

Because FDA has not established any specific counterpart regulation regarding underage possession of tobacco products, section 11.76.105 of the Alaska Statutes is not preempted. Consequently, an exemption from preemption for this section is not necessary.

C. State of Utah

In December 1996, the State of Utah applied for an exemption from preemption for section 76-10-104 of the Utah Code Annotated.⁷ The provision reads as follows:

76-10-104. Furnishing cigars, cigarettes, or tobacco to minors—Penalties.

Any person who sells, gives, or furnishes any cigar, cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

The age restriction on "sell[ing] * * * any cigar, cigarette, or tobacco in any form, to any person under 19 years of age" that is found in section 76-10-104 of the Utah Code Annotated differs from the requirement in § 897.14(a), which prohibits the sale of cigarettes and smokeless tobacco to anyone under age 18. FDA believes, however, that Utah's higher minimum age for cigarette and smokeless tobacco sales will provide increased public health benefits and will not impose a significant burden on retailers. Therefore, to the extent that the age restriction on sales of cigarettes and smokeless tobacco found in section 76-10-104 of the Utah Code Annotated is preempted, FDA is proposing to grant an exemption from preemption.

Section 76-10-104 of the Utah Code Annotated also prohibits, in part, a person from giving or furnishing cigarettes or smokeless tobacco to persons under age 19. Because this restriction on distribution of tobacco products does not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 19, section 76-10-104 of the Utah Code Annotated is narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d).⁸ Although section 76-10-104 of the Utah

⁷ The original request sought an exemption from preemption for section 76-10-105 of the Utah Code Annotated. That provision states that any person under age 19 who buys, accepts, or has in his possession any cigar, cigarette, or tobacco in any form is guilty of a class C misdemeanor. The provision also discusses the jurisdiction of the juvenile court for such offenses and the authority of a compliance officer to issue citations. However, the request was later amended after FDA noted that this provision in the Utah Code Annotated is not preempted (because there is no specific FDA counterpart regulation concerning underage persons who buy, accept, or possess tobacco products), but that section 76-10-104 might be preempted absent an exemption from preemption.

⁸ Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco as well as verification of purchaser's age, FDA will address the issue of preemption of the age restrictions on distribution of tobacco products found in section 76-10-104 of the Utah Code Annotated.

Code Annotated has a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, this portion of the statute is not preempted because it is similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Utah as established under section 76-10-104 of the Utah Code Annotated does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

Finally, to the extent that section 76-10-104 of the Utah Code Annotated applies to products other than cigarettes or smokeless tobacco, the statute is not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products other than cigarettes or smokeless tobacco. (See § 808.1(d).)

D. State of Washington

On December 6, 1996, the State of Washington applied for an exemption from preemption for section 26.28.080 of the Revised Code of Washington (RCW) (a State law) and section 314-10-050 of the Washington Administrative Code (WAC) (a State administrative regulation). RCW 26.28.080 contains a prohibition against underage sales and distribution of certain enumerated tobacco products. WAC 314-10-050 contains a similar prohibition, but also establishes a requirement that purchasers of tobacco products provide proof of age, and lists acceptable forms of identification. The relevant provisions read as follows:

RCW 26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty.

Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

WAC 314-10-050 Sales to persons under 18 years of age

(1) No person may sell or give or in any way provide tobacco products to any person under 18 years of age.

(2) Any person attempting to purchase tobacco products must present identification to show he/she is at least 18 years of age upon the request of any tobacco licensee, employee of a tobacco licensee or

enforcement officer as defined by RCW 7.8.040.

(3) All identification used to prove age must be officially issued and contain the bearer's age, signature and photograph. The only forms of identification which are acceptable as proof of age for the purchase of tobacco products are:

(a) A liquor control authority card of identification issued by a state of the United States or a province of Canada,

(b) A driver's license, instruction permit or identification card issued by a state of the United States or a province of Canada,

(c) A United States military identification card,

(d) A passport, or

(e) A merchant marine identification card issued by the United States Coast Guard.

RCW 26.28.080 prohibits, in part, a person from giving "to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form." Similarly, WAC 314-10-050(1) prohibits, in part, a person from "giv[ing] or in any way provid[ing] tobacco products to any person under 18 years of age." Because these restrictions on distribution of tobacco products do not prohibit the distribution of free samples of cigarettes and smokeless tobacco to persons over the age of 18, RCW 26.28.080 and WAC 314-10-050(1) are narrower in scope than the complete prohibition against distribution of free samples of cigarettes and smokeless tobacco established under § 897.16(d).⁹ Although RCW 26.28.080 and WAC 314-10-050(1) have a narrower scope of coverage than the tobacco rule with regard to distribution of tobacco products, these portions of the statute and the regulation are not preempted because they are similar to the tobacco rule's restrictions on cigarette and smokeless tobacco distribution. FDA notes, however, that the narrower scope of coverage at the State level in Washington as established under RCW 26.28.080 and WAC 314-10-050(1) does not narrow or limit the scope of coverage of Federal requirements contained in the tobacco rule.

To the extent that RCW 26.28.080 and WAC 314-10-050(1) apply to products other than cigarettes or smokeless tobacco, they are not preempted by the tobacco rule because the tobacco rule does not establish "specific counterpart regulations" or other specific requirements with respect to products

other than cigarettes or smokeless tobacco. (See § 808.1(d).)

WAC 314-10-050(2) requires any person attempting to purchase tobacco products to present identification to establish the purchaser's age, and WAC 314-10-050(3) specifies requirements for the types of identification that the purchaser must present. FDA has not established any specific counterpart regulation that places an affirmative duty upon the purchaser to present identification as proof of age. Rather, § 897.14(b) requires the retailer to "verify by means of photographic identification * * * that no person purchasing the product is younger than 18 years of age." Because there is no specific counterpart regulation under the act, neither WAC 314-10-050(2) nor WAC 314-10-050(3) is preempted.

In conclusion, RCW 26.28.080 and WAC 314-10-050 are not preempted. Thus, no exemption is necessary for either provision.

E. The Notice of Opportunity for Hearing

FDA's regulation in 21 CFR 808.25(c) provides that, when the agency issues in the Federal Register a proposed rule either granting or denying requests for exemption from preemption, the agency will also issue in the Federal Register a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the applications and the proposed rule. Elsewhere in this issue of the Federal Register, FDA is issuing such a notice.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, this

document has been reviewed by the Office of Management and Budget as a significant regulatory action under Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would exempt certain pre-existing statutory or regulatory provisions in Alabama, Alaska, and Utah from preemption, the Commissioner of Food and Drugs certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Interested persons may, on or before March 21, 1997, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: Secs. 521, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k, 371).

2. New § 808.51 is added to subpart C to read as follows:

§ 808.51 Alabama.

To the extent that the age restriction on the sale, barter, and exchange of cigarettes and smokeless tobacco found in Alabama Code, section 13A-12-3, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

3. New § 808.52 is added to subpart C to read as follows:

⁹ Despite the focus of this proposed rule upon State and local requirements regarding retail sales of cigarettes and smokeless tobacco as well as verification of purchaser's age, FDA will address the issue of preemption of the age restrictions on distribution of tobacco products found in RCW 26.28.080 and WAC 314-10-050(1).

§ 808.52 Alaska.

To the extent that the age restriction on the sale and exchange of cigarettes and smokeless tobacco found in Alaska Statutes, sections 11.76.100(a), is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

4. New § 808.94 is added to subpart C to read as follows:

§ 808.94 Utah.

To the extent that the age restriction on sales of cigarettes and smokeless tobacco found in the Utah Code Annotated, section 76-10-104, is preempted under section 521(a) of the act, the Food and Drug Administration has exempted it from preemption under section 521(b) of the act.

Dated: February 7, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-4045 Filed 2-13-97; 2:19 pm]

BILLING CODE 4160-01-F

21 CFR Part 808

[Docket No. 96N-0249]

RIN 0910-AB03

Medical Devices; Opportunity for Oral Hearing on Proposed Action on Applications for Exemption From Preemption From Cigarette and Smokeless Tobacco Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of opportunity for oral hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for interested persons to request an oral hearing on a proposed rule that would grant exemption from Federal preemption for certain cigarette and smokeless tobacco requirements in various States. The proposed rule is published elsewhere in this issue of the Federal Register.

DATES: Requests for an oral hearing by March 21, 1997.

ADDRESSES: Written requests to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Anne M. Kirchner, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-5321.

SUPPLEMENTARY INFORMATION: FDA's regulation in § 808.25 (21 CFR 808.25)

provides procedures for processing applications for exemption from Federal preemption of State and local requirements applicable to medical devices under section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k). Section 808.25(c) provides that, when FDA issues in the Federal Register a proposed rule either to grant or to deny a request for exemption from preemption, the agency will also issue in the Federal Register a notice of opportunity for interested persons to request an oral hearing before FDA to present views on the application and the proposed rule.

Elsewhere in this issue of the Federal Register, FDA is issuing a proposed rule responding to the following applications for exemption from preemption:

(1) An application from the State of Alabama for exemption from preemption for section 13A-12-3 of the Alabama Code;

(2) An application from the State of Alaska for exemption from preemption for sections 11.76.100 and 11.76.105 of the Alaska Statutes;

(3) An application from the State of Utah for exemption from preemption for section 76-10-104 of the Utah Code Annotated; and

(4) An application from the State of Washington for exemption from preemption for section 26.28.080 of the Revised Code of Washington and for section 314-10-050 of the Washington Administrative Code.

Therefore, in accordance with § 808.25(c), FDA is announcing an opportunity for interested persons to request an oral hearing on its proposal to grant exemption from Federal preemption for certain State requirements pertaining to cigarettes and smokeless tobacco.

FDA advises that, under § 808.25(d), any request for a hearing is required to be submitted to the Dockets Management Branch (address above) and to include an explanation of why an oral hearing, rather than submission of written comments only, is essential to the presentation of views on the application for exemption from preemption and on the proposed regulation. Further, to ensure expeditious review of requests for an oral hearing and final action on the applications for exemption and on the proposed rule, FDA has limited the period for requesting an oral hearing to 30 days from the date of publication of the proposed rule and this notice in the Federal Register.

Under § 808.25(e), if a timely request for a hearing is made, FDA will review the request and will determine whether a hearing should be granted. If FDA

determines that an oral hearing should be held, it will announce the time, date, and place of the hearing in a future issue of the Federal Register. The procedures that will govern any such oral hearing are those applicable to a public hearing under part 15 (21 CFR part 15) of FDA's administrative practices and procedures regulations.

Interested persons may, on or before March 21, 1997, submit to the Dockets Management Branch (address above) written requests for an oral hearing on this matter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Requests are to be identified with the docket number found in brackets in the heading of this document. Received requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under FDA's authority in section 521 of the act and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: February 7, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97-4046 Filed 2-13-97; 2:19 pm]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****25 CFR Part 40**

RIN 1076-AA10

Grant Program for Higher Education

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend its regulations on Higher Education Grant Programs to improve the clarity of the regulations and understanding of the public as mandated by Executive Order 12866.

DATES: Comments must be received on or before May 20, 1997.

ADDRESSES: Mail comments to Joann S. Morris, Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 1849 C St. NW., Mail Stop 3512-MIB, Washington, DC 20240; or, hand deliver them to Room 3512 at the above address. Comments will be available for inspection at this address from 9 a.m. to 4 p.m., Monday through Friday beginning approximately March 5, 1997.

FOR FURTHER INFORMATION CONTACT:

Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs at telephone (202) 219-1128.

SUPPLEMENTARY INFORMATION:

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes, 25 U.S.C. 2 and 9.

Publication of the proposed rule by the Department of the Interior (Department) provides the public an opportunity to participate in the rulemaking process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

Executive Order 12778

The Department has certified to the Office of Management and Budget (OMB) that the proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This proposed rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this proposed rule does not have "significant" takings implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this proposed rule does not have significant federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

NEPA Statement

The Department has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any

governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of the Interior has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

All information is to be collected annually from each applicant. The annual reporting and record keeping burden for this collection of information is estimated to average 4 hours for each response for 22 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. The total annual reporting and record keeping burden for this collection is estimated to be 76 hours.

Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10202, New Executive Office Building, Washington, DC 20503; Attention: Interior Desk Officer.

The Department considers comments by the public on this proposed collection of information in:

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;

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;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond; including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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 the OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Bureau of Indian Affairs on the proposed regulations.

Drafting Information: The primary author of this document is Garry R. Martin, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 40

Indians—education, Indians—educational assistance.

For the reasons given in the preamble, Part 40 of Title 25, chapter I of the Code of Federal Regulations is proposed to be revised as set forth below.

PART 40—HIGHER EDUCATION GRANT PROGRAM**Sec.**

- 40.1 What special terms apply?
- 40.2 What is the purpose of this part?
- 40.3 Who is eligible for a higher education grant?
- 40.4 How do I apply for a higher education grant?
- 40.5 How is my application reviewed?
- 40.6 How will I be notified if I am awarded a grant?
- 40.7 How will I receive the grant?
- 40.8 How long does my financial aid last?
- 40.9 What happens if I withdraw from school?
- 40.10 How do I appeal a grant decision?
- 40.11 What records are kept for the grant program?
- 40.12 How does a tribe estimate allowable administrative costs?
- 40.13 May a tribe prioritize its higher education grant program?
- 40.14 Are there requirements for information collection?

Authority: 25 U.S.C. 2, 9, and 13; Reorganization Plan No. 3 of 1950 (65 Stat. 1262)

§ 40.1 What special terms apply?

Academic year means a period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters at a institution that measures academic process in credit hours.

Accreditation means the certification of an institution of higher education by a sanctioned national or regional accrediting agency or association recognized by the Secretary of Education.

BIA means the Bureau of Indian Affairs.

Campus-based aid means the Federal financial aid programs (i.e., Supplemental Educational Opportunity Grants (SEOG), College Work-Study (CWS), and Perkins Loan) administered by the financial aid office.

Certificate of Agreement means a written agreement between a grant recipient and the higher education program describing how a recipient pays back grants when the recipient does not meet the requirements in 25 CFR 40.8 and 40.9.

Continuing student means a grant recipient who is currently enrolled in an

eligible institution and is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress.

Director means the Director, Office of Indian Education Programs, Bureau of Indian Affairs.

Education Line Officer means a Bureau of Indian Affairs official designated as an Agency Superintendent for Education or an Education Program Administrator.

Eligible institution means an institution of higher education that is accredited by a national or regional accrediting agency or is a candidate for accreditation, or is a tribally controlled community college.

Financial aid office means the office of an institution of higher education that has responsibility for institutionally administered financial aid.

Financial aid package means the institution's documents that identify the amounts and types of financial aid awarded by the institution and the amount of unmet need.

Full time student means an enrolled student who is carrying a full time academic work load (other than correspondence course) as determined by the eligible institution.

Higher education grant package means documents required to identify, eligibility for assistance obtainable through federally recognized tribal offices, or BIA offices. This package is available from tribal Higher Education Grant Programs local Office of Indian Education Programs.

Higher Education Office means a Bureau Education Line Office, tribal or tribal organization administering funds appropriated to the Bureau for higher education grants to eligible students.

Indian means a person who is a member of or is at least one-quarter degree Indian blood descendant of a member of an Indian tribe that is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians.

Indian tribe means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village, that is recognized by the United States Government, through the Secretary of the Interior, for special programs and services provided by the Secretary to Indians because of their status as Indians.

Mitigating circumstances means a circumstance, such as, a student's medical diagnosed condition impairing the ability to continue a course of study documented by his or her physician, or any other undue hardship that

significantly hinders a student's academic progress.

Near reservation means those areas or communities next to reservations that are designated by the Assistant Secretary—Indian Affairs upon recommendations of the local BIA Superintendent with input of the affected tribal governing body.

Program plan means an individualized course of study in which the student, in conjunction with the degree granting institution of higher education, outlines the required courses for the desired degree.

Unmet need means the difference between the student's cost of education and the resources available to defray those costs.

You means the grant applicant or potential applicant.

§ 40.2 What is the purpose of this part?

The BIA Grant Program for Higher Education, administered under the authority of the Snyder Act of November 2, 1921 (25 U.S.C. 13), provides financial assistance to eligible Indian students who have unmet financial needs as determined by the eligible institution's Financial Aid Office. All grants made under this part shall be subject to availability of appropriations.

§ 40.3 Who is eligible for a higher education grant?

To be eligible for a higher education grant:

(a) You must be a member of a federally recognized Indian tribe eligible for the programs provided to Indians by the BIA, or be a one-quarter degree blood descendant of such a member;

(b) You must be admitted to an institution of higher education that is accredited by national or regional accrediting agency, is a candidate for accreditation, or is an eligible institution;

(c) You must apply for all available campus-based aid by an established due date; and

(d) You must have unmet need (the difference between the cost of your education and your resources for defraying that cost) as determined by the eligible institution's financial aid office.

§ 40.4 How do I apply for a higher education grant?

(a) You must have the institution's financial aid office prepare and certify an application package for financial aid. The package must include:

(1) A letter of acceptance from your institution (required only if you are a new, transfer, or a previously suspended student);

(2) A completed BIA form for applying for a higher education grant;

(3) A Certificate of Indian Blood (CIB) from your tribe or from the BIA certifying that you are a member of a tribe or have documentation to support a claim to Indian descent by blood quantum;

(4) A high school transcript or General Education Development (GED) high school equivalency certificate;

(5) Grades, transcripts or progress reports from previous term/year of attendance (continuing students); and

(6) A statement agreeing to repay the grant if you fail to enroll, withdraw or are expelled, unless there are mitigating circumstances.

(b) This package must be submitted to the BIA or tribal organization administering the program for your tribe by the due date set by that organization. If your application arrives after the due date, your application will be considered only if funds remain available.

(c) You must submit a separate application for a summer school program.

§ 40.5 How is my application reviewed?

The BIA or tribal organization administering the program for your tribe reviews your application. The BIA or tribal organization will:

(a) Determine your unmet need, using information from your institution's financial aid office;

(b) Approve your eligibility for a grant according to your tribe's priority plan; and

(c) Within availability of funds, fund no more than your unmet need.

§ 40.6 How will I be notified if I am awarded a grant?

The BIA or tribal organization administering the program for your tribe will tell you and your institution's financial aid office in writing of its approval or denial.

§ 40.7 How will I receive the grant?

(a) The BIA or tribal organization administering the program will issue your grant to your institution's financial aid office.

(b) Your institution's financial aid office will distribute the grant money according to its policy on disbursement.

§ 40.8 How long does my financial aid last?

(a) If your undergraduate degree or Certificate program requires four or fewer academic years, you may take extra years to complete the program, but you must finish a degree in no more than five academic years.

(b) If your undergraduate degree or certificate program normally requires more than four academic years, you may take extra years to complete the program, but you must finish a degree in six academic years.

(c) The BIA or tribal organization administering the program may waive the time limits for hardship caused by special circumstances.

(d) To remain eligible for continued funding, you must submit a grade report or transcript for each term to the BIA or tribal organization administering the program.

§ 40.9 What happens if I withdraw from school?

(a) You will be required to pay back any portion of the grant you receive if you, without mitigating circumstances, fail to enroll, withdraw or are expelled before the completion of a term.

(b) Within ten days of your failure to enroll or withdrawal or expulsion you will be required to submit to the BIA or tribal organization administering the program:

(1) The date of your failure to enroll, withdrawal or expulsion;

(2) A written statement with supporting documentation stating your reasons for a failure to enroll, withdrawal or expulsion including mitigating circumstances; and

(3) A copy of your request to the institution that all remaining grant funds be returned to the BIA.

(c) The Bureau of Indian Affairs or tribal organization administering the program will notify you in writing of arrangements to pay the balance of funds based upon a Certificate of Agreement between you and the organization awarding your grant or grant you a waiver from repayment based upon mitigating circumstances.

§ 40.10 How do I appeal a grant decision?

You may appeal the decisions of any BIA official by following the procedures in 25 CFR part 2, Appeals from Administrative Actions.

§ 40.11 What records are kept for the grant program?

(a) The Higher Education Office will maintain your files, a ledger of all costs, and related records necessary to identify all transactions involving expenditure of funds made available to you under this program. These records:

- (1) Identify your award and status;
- (2) Demonstrate your eligibility;
- (3) Document the amount of your award and the manner in which your unmet need was calculated and met;
- (4) Identify whether your enrollment was terminated;

(5) Identify collections based upon Certificates of Agreement; and

(6) Identify waivers from repayment.

(b) By November 1 of each year, the Education Line Officer will submit a Higher Education Grant Program Annual Report for the preceding academic year to the Director of the Office of Indian Education Programs.

§ 40.12 How does a tribe estimate allowable administrative costs?

Tribes and tribal organizations that do not have a negotiated an indirect cost rate with the Federal Government may use no more than 15 percent of available program funds to pay for indirect program costs chargeable to the program.

§ 40.13 May a tribe prioritize its higher education grant program?

Yes.

(a) A tribe operating a higher education program may set program priorities for categories of applicants. These priorities in order to be given effect must be set out in the application materials provided to grant applicants, and attached to the tribe's contract or annual funding agreement. This tribal program priority plan may include a listing of priorities, the reasons and supporting documentation.

(b) If a tribe desires to set a higher academic standard by increasing the minimum grade point average, designate academic hours needed in order to be classified as a full time student, set priorities to first serve students residing near or within the exterior boundaries of the reservation or on trust or restricted lands, the tribe may do so.

§ 40.14 Are there requirements for information collection?

The information collection requirement contained in this part has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number 1076-0106.

Dated: January 28, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-4000 Filed 2-18-97; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

DoD Freedom of Information Act Program Regulation

AGENCY: Department of Defense

ACTION: Proposed rule.

SUMMARY: This proposed revision provides substantive and administrative changes to conform to the requirements of the Electronic Freedom of Information Act Amendments of 1996, 5 U.S.C. 552, as amended by Public Law 104-231. It also provides guidance to the Department of Defense on implementation of this amended law.

DATES: Comments must be received by April 21, 1997.

ADDRESSES: Forward copies to ASD(PA), Room 2C757, 1400 Defense Pentagon, Washington, DC 20301-1400

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703-697-1171.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 286 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does not economically

impact Federal Government relations with the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is proposed to be revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Subpart A—General Provisions

- Sec.
- 286.1 Purpose and applicability.
- 286.2 DoD public information.
- 286.3 Definitions.
- 286.4 Policy.

Subpart B—FOIA Reading Rooms

- 286.7 Requirements.
- 286.8 Indexes.

Subpart C—Exemptions

- 286.11 General provisions.
- 286.12 Exemptions.

Subpart D—For Official Use Only

- 286.15 General provisions.
- 286.16 Markings.
- 286.17 Dissemination and transmission.
- 286.18 Safeguarding FOUO information.
- 286.19 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

- 286.22 General provisions.
- 286.23 Initial determinations.
- 286.24 Appeals.
- 286.25 Judicial actions.

Subpart F—Fee Schedule

- 286.28 General provisions.
- 286.29 Collection of fees and fee rates.
- 289.30 Collection of fees and fee rates for technical data.

Subpart G—Reports

- 286.33 Reports control.
- 286.34 Annual report.

Subpart H—Education and Training

- 286.37 Responsibility and purpose.
- Appendix A to Part 286—Unified Combatant Commands—Processing Procedures for FOIA Appeals
- Appendix B to Part 286—Addressing FOIA Requests
- Appendix C to Part 286—Other Reason Categories

Appendix D to Part 286—"Record of Freedom of Information (FOI) Processing Cost" (DD Form 2086)

Appendix E to Part 286—"Record of Freedom of Information (FOI) Processing Cost for Technical Data" (DD Form 2086-1)

Appendix F to Part 286—"Annual Report Freedom of Information Act" (DD Form 2564)

Appendix G to Part 286—DoD Freedom of Information Act Program Components Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and DoD Directive 5400.7¹ and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DoD Components is at appendix G to this part.

§ 286.2 DoD public information.

(a) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld unless the record is exempt from mandatory disclosure under the FOIA. As a matter of policy, DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information

concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) Within the Office of the Secretary of Defense, the Chief Information Officer, who is also the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence is responsible for preparing reference material or a guide for requesting records or information from the DoD, subject to the nine exemptions of the FOIA. This part shall also include an index of all major information systems, and a description of major information and record locator systems. DoD FOIA Components shall coordinate with the appropriate office(s) to insure that this function is also accomplished within their department or organization.

(c) DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for obtaining information from their organization. This handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator System (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means, and identify how a requester can access DoD Components' Freedom of Information Act annual reports. Similarly, the DoD Components' Freedom of Information Act annual reports should refer to the handbook and how to obtain it.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(d) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.4 (m)

§ 286.3 Definitions.

As used in this part, the following terms and meanings shall be applicable:

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse a decision to: Withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4 (d) (3); deny a request for waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search.

Agency record. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DoD's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(iv) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain

a record to satisfy an FOIA request. See § 286.4 (g) (2) with respect to creating a record in the electronic environment.

(4) Hard copy or electronic records, which are subject to FOIA requests under 5 U.S.C. 552 (a)(3), and which are available to the public through an established distribution system, or through the Federal Register, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, provide the requester with guidance on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then process the FOIA request. If the information sought is not an agency record pursuant to the FOIA and this part, there is no obligation to process the request under the FOIA, and the requester shall be so notified.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record, or any of the other adverse determinations outlined in definitions "Initial denial authority and Administrative appeal."

DoD Component. An element of the Department of Defense, as defined in § 286.1 (a) of this section authorized to receive and act independently on FOIA requests (see appendix G to this part). A DoD component has its own initial denial authority (IDA), appellate authority, and legal counsel.

Electronic data. Records and information (including e-mail) which are created, stored, and retrievable by electronic means.

FOIA request. A written request for DoD records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically.

Honoring form or format requests. DoD Components shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. DoD Components shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DoD Components shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DoD Components"

automated information system. Such determinations shall be made on a case by case basis. See also § 286.4 (g) (2).

Initial denial authority (IDA). An official who has been granted authority by the head of a DoD component to: withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA's may also deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4 (c) (3); deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

§ 286.4 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA, this part, and DoD FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* (1) Generally, when a member of the public complies with the procedures established in this part and DoD Component regulations or instructions

for obtaining DoD records, the request shall receive prompt attention, and a response determination shall be dispatched within 10 working days (20 working days effective October 2, 1997) unless a significant number of requests precludes a determination within this time period. A response determination is notification to the requester that the records are released, or will be released on a certain date, or the records are denied under the appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons in paragraph (c) of this section. Interim responses acknowledging receipt of the request are encouraged; however, such responses do not constitute a response determination pursuant to the FOIA.

(2) *Multitrack processing.* When a Component has a significant number of requests which precludes a response determination being made within 10 working days (20 working days effective October 2, 1997), the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing as described in paragraph (d) (3) of this section. DoD Components may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing as described in paragraph (d) (3) of this section. Simple and complex requests shall be decided by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described in paragraph (d) (3) of this section, an opportunity to limit in writing by hard copy, facsimile, or electronically, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate components' responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(3) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's

compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DoD Components shall process the request as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) *Compelling need.* The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) It is also the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(A) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(B) *Actual or alleged Federal government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

(iii) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(iv) *Other reason for expedited processing.* Another reason which merits expedited processing by DoD Components is an imminent loss of substantial due process rights. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement

must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for this reason, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(v) These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is DoD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. It is DoD policy that DoD Components shall make discretionary releases whenever possible; however, a discretionary release is normally not appropriate for records clearly exempt under exemptions 1, 3, 4, 6, 7 (F) and 7(C). Exemptions 2, 5, and 7(A)(B)(D) and (E) are discretionary in nature, and DoD Components are encouraged to exercise discretionary releases whenever possible. Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms in paper form, as well as electronically to facilitate public access. Exempt records released pursuant to the FOIA may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. Disclosure to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive the exemption. (See § 286.22 (d)). Records disclosed without authorization by the appropriate DoD official ("leaks") do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. Unless the originator or submitter of the record has imposed restrictions controlling the dissemination of the record, a DoD Component has control of a record when it has possession of the record and uses it in the conduct of its business. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component,

however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart F of this part.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing data base is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, which would cause a significant interference with the operation of the components' automated information system would not be a business as usual approach.

(h) *Description of requested record.*

(1) Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. When a DoD Component receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in paragraph (h)(2) of this section. DoD Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DoD Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) *Category I.* File-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) *Category II.* Event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the DoD Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a Privacy Act system of records, retrievable by personal identifiers need be searched. However, if a DoD Component has reason to believe that records on the requester may exist in a record system other than a Privacy Act system, the DoD Component shall search that system under the provisions of the FOIA. In either case, DoD Components may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the Privacy Act (5 U.S.C. 552a). If the record is releasable under the FOIA, the Privacy Act does not bar its disclosure. See paragraph (m) of this section for the relationship between the FOIA and the Privacy Act.

(5) The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DoD Component to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the DoD Component's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* (1) The DoD FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DoD Component

receives a request for records originated by another DoD Component, it shall contact the DoD Component to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DoD Components from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other DoD Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. Prior to notifying a requester of a referral to another DoD Component, the DoD Component receiving the initial request shall consult with the other DoD Component to determine if that DoD Component's association with the material is classified. If the association is classified, the DoD Component receiving the initial request will protect the association and any exempt information without revealing the identity of the protected DoD Component. The protected DoD Component shall be responsible for submitting the justifications required in any litigation. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DoD Components making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer for response directly to the requester, a FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may refer a request for a record that it originated to

another DoD Component or agency when the other DoD Component or agency has a valid interest in the record, or the record was created for the use of the other DoD Component or agency. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate DoD Component and the requester shall be notified of the referral. Another example is a record originated by a DoD Component or agency which involves foreign relations, and could affect a DoD Component or organization in a host foreign country. Such a request and any responsive records, may be referred to the affected DoD Component or organization and the Department of State for consultation prior to a final release determination within DoD. See also § 286.22(e).

(5) Within DoD, a DoD Component shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component, except as provided in § 286.22(e).

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitask processing queues, based upon the date of initial receipt of the request at the referring component or agency.

(7) Agencies outside the Department of Defense that are subject to the FOIA.

(i) A DoD Component may refer a FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DoD Component must respond to the request.

(ii) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records

that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DoD Component may only respond directly to the requester after coordination with the outside agency.

(8) DOD Components which receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. DoD records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DoD Components' files shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs)(OASD(PA)), ATTN: Directorate for Freedom of Information and Security Review (DFOISR). The DFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(9) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(10) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) records containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of \$5.20 for each authentication.

(k) *Unified Combatant Commands.* The Unified Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Joint Staff, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3;² it authorizes and requires the Unified Combatant Commands to process Freedom of Information Act (FOIA) requests in accordance with DoD

Directive 5400.7 and this part. The Unified Combatant Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A to this part.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule, and DoD Component records schedules.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) If the record is releasable under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), the requester shall be so advised with the appropriate PA exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(3) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records.

(4) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) the requester shall be so advised with the appropriate PA exemption, and then further advised that the information was therefore reviewed for release under the FOIA.

(5) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their

² See footnote 1 to § 286.1(a).

requests processed under the FOIA since the PA does not apply to these records.

(6) Requesters who seek access to agency records and who cite or imply the FOIA, will have their requests processed under the FOIA.

(7) Requesters shall be advised in final responses why their request was processed under a particular Act.

(n) *Non-responsive information in responsive records.* DoD components shall interpret FOIA requests liberally when determining which records are responsive to the requests. DoD Components shall respond to FOIA requests which involve non-responsive information within a responsive record in the following manner:

(1) Negotiate with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) Should negotiation fail, if the responsive record is unclassified, release all non-responsive and responsive information. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption (s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) Should negotiation fail, if the responsive record is classified, release all unclassified responsive and non-responsive information which is not otherwise exempt. If the non-responsive information is exempt, follow the procedures in (m) (2) of this section. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

Subpart B—FOIA Reading Rooms

§ 286.7 Requirements.

(a) *Reading room.* (1) Implementation of 5 U.S.C. 552 (a)(1) and (a)(2) within the Office of the Secretary of Defense is a records management responsibility

within Washington Headquarters Services, Directives and Records Division. Each DoD Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described in paragraph (b) of this section. In addition to the materials described in paragraph (b) of this section, DoD Components may elect to place other records in their reading room, and also make them electronically available to the public. DoD Components may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part.

(2) The FOIA requires that copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552 (a)(3), and which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records be made publicly available.

(i) DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

(A) Previous experience of the DoD Component with similar records.

(B) Particular circumstances of the records involved, including their nature and the type of information contained in them.

(C) The identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DoD Components may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(b) *Material availability.* The FOIA requires that "(a) (2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a) (2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record

which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DoD Component may publish in the Federal Register a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. For "(a)(2)" records created after November 1, 1996, such records shall be made available to the public in hard copy and by computer telecommunications or by other electronic means by November 1, 1997. "(a) (2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the Federal Register.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.8 Indexes.

(a) *"(a) (2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.7 (a), an index of materials described in § 286.7 (b), that are issued, adopted, or promulgated, after July 4, 1967. No "(a) (2)" materials issued, promulgated, or adopted after July 4, 1967, that are not indexed and either made available or published may be relied upon, used or

cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(4) A general index of records referred to in § 286.7(b)(4) shall be made available to the public, both in hard copy and electronically by December 31, 1999.

(b) *Other materials.* (1) Any available index of DoD Component material published in the Federal Register, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms, and electronically to the public.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA reading rooms, "(a)(1)" materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.11 General provisions.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or

provided in response to an FOIA request.

§ 286.12 Exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 286.4(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(a) *Number 1 (5 U.S.C. 552(b)(1)).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R³. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1-R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Compilations of items of information which are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1-R, and is not otherwise revealed in the individual items of information.

(b) *Number 2 (5 U.S.C. 552(b)(2)).* Those related solely to the internal personnel rules and practices of DoD or

any of its Components. This exemption is entirely discretionary. This exemption has two profiles, high b2 and low b2. Paragraph (b)(2) of this section, contains a brief discussion on the low b2 profile; however, that discussion is for information purposes only. When only a minimum government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components shall not invoke the low b2 profile.

(1) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DoD. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Computer software, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include; rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. DoD Components shall not invoke the low b2 profile.

(c) *Number 3 (5 U.S.C. 552(b)(3)).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The

³ See footnote 1 to § 286.1 (a).

Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense for Public Affairs maintains a list of "(b)(3)" statutes used within DoD, and provides updated lists of these statutes to DoD Components on a periodic basis. A few examples of such statutes are:

(1) *Patent Secrecy*, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(2) *Restricted Data and Formerly Restricted Data*, 42 U.S.C. 2162.

(3) *Communication Intelligence*, 18 U.S.C. 798.

(4) Authority to withhold from public disclosure certain technical data, 10 U.S.C. 130 and DoD Directive 5230.25.⁴

(5) *Confidentiality of medical quality assurance records*: Qualified Immunity for Participants, 10 U.S.C. 1102 f.

(6) *Physical protection of special nuclear material*: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(7) Protection of intelligence sources and methods, 50 U.S.C. 403–3(c)(5).

(8) Protection of Contractor Submitted Proposals, 10 U.S.C. 2305(g).

(9) Procurement Integrity, 41 U.S.C. 423.

(d) Number 4 (5 U.S.C. 552 (b)(4)). Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also § 286.23(h)(2).

Additionally, when the provisions of 10 U.S.C. 2305(g), and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 CFR, part 227, subpart 227.71–227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (see § 286.12(b)(3)(v)).

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, executive orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary (see also § 286.23(h)(3)).

(e) *Number 5* (5 U.S.C. 552(b)(5)).

Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e)(2) through (e)(5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

(1) Examples of the deliberative process include:

(i) The non factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those non factual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, state, or military court, as well as records that qualify for the attorney-client privilege.

⁴ See footnote 1 to § 286.1 (a).

(vii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(viii) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(2) If any such intra or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be made through the discovery process by special order of the court based on agency maintaining its confidentiality, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552 (b)(6))*. Information in personnel and medical files, as well as similar personal

information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion in its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(i) *Privacy interest*. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) Names and duty addresses published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family

members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld as it used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24.⁵

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.⁶

(5) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, first review the Privacy Act and then consult with legal counsel.

(6) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal agencies before referring a record which is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; or

(B) The person whose personal privacy is in jeopardy is deceased, the agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph (f) (3) of this section.

⁵ See footnote 1 to § 286.1 (a).

⁶ See footnote 1 to § 286.1 (a).

(g) *Number 7 (5 U.S.C. 552 (b)(7))*. Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F) of this exemption, this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) information, there is no discretion in its release. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(1) Could reasonably be expected to interfere with enforcement proceedings.

(2) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 7C must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal agencies before referring a record which is exempt under the Glomar concept.

(ii) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist.

Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or

(B) The person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(iv) Could reasonably be expected to disclose the identity of a confidential

source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(4) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(5) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(6) When the subject of an investigative report is the requester of the record and the report is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11-R⁷, and by exemption seven of the FOIA.

(7) *Exclusions*. Excluded from the previously identified exemption, are the below two situations applicable to the Department of Defense. Components considering invoking an exclusion

should first consult with the Department of Justice, Office of Information and Privacy.

(i) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552 (b)(8))*. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552 (b)(9))*. Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General*. Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application*. The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to

⁷ See footnote 1 to § 286.1 (a).

determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemptions apply, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24⁸ shall bear that statement and may be marked FOUO, as appropriate.

§ 286.16 Markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO

marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions, apply.

§ 286.17 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4⁹. Release to the GAO is governed by DoD Directive 7650.1¹⁰. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials,

that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electronically and facsimile transmitted messages.* Each part of electrically and facsimile transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages and facsimiles shall be transmitted in accordance with communications security procedures in Allied Communications Publication (ACP-121¹¹) for FOUO information.

§ 286.18 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-government personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of 50 U.S.C. 402 note shall meet the safeguards outlined for that group of records.

§ 286.19 Termination, disposal and unauthorized disclosure.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing

⁸ See footnote 1 to § 286.1 (a).

⁹ See footnote 1 to § 286.1 (a).

¹⁰ See footnote 1 to § 286.1 (a).

¹¹ Not for general public distribution. Available to Military Components only. Components contact MCEB.

them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.22 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the provisions of 5 U.S.C. 552 (a)(3) of the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions of the FOIA.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and

correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(2) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix B to this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. federal agencies seeking official information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. DoD Components are under no obligation to establish procedures to receive hand delivered requests; and they should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided for in §§ 286.4(f) and 286.12.

(c) *Requests from Government officials.* Requests from officials of State, or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (See also § 286.4 (f) and paragraph (d) of this section). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release to U.S. Government officials.* (1) Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal government, whether legislative, executive, or administrative, as follows:

(i) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4;

(ii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee;

(iii) In response to an order of a Federal court, DoD Components shall release information along with a description of the restrictions on its release to the public.

(2) DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA. DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R, and information contained in Privacy Act systems of records is subject to DoD 5400.11–R.

(e) *Coordination with affected DoD component.* (1) When a DoD Component receives a FOIA request for a record in which an affected DoD organization (including a Unified or Subunified Combatant Command) has a substantial interest in the subject matter, or the DoD Component receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DoD component receiving the request shall provide the request to the affected DoD component.

(2) Upon receiving the request, the affected DoD Component shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected DoD component, the DoD component receiving the initial request shall provide a copy of releasable records to the affected DoD component. The affected DoD component may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DoD Component shall notify the DoD Component which initially received the request of the release to the host nation.

(3) Nothing in the previous paragraphs of this section shall impede the processing of the FOIA request initially received by a DoD component.

§ 286.23 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination whether to make a record available upon request may be made by any suitable official

designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under the FOIA is applicable.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3) of the FOIA:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(3) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(4) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(5) The request is withdrawn by the requester.

(6) The information requested is not a record within the meaning of the FOIA and this part.

(7) The record is denied in whole or in part in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in subpart C of this part.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. The amount of deleted information shall be indicated on the released portion of

paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left "white" without the use of brackets to show the bounds of deleted information. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days (20 working days effective October 2, 1997) after receipt of the request by the official designated to respond. When a DoD Component has a significant number of requests which preclude a response determination within the 10 working day period (20 working days effective October 2, 1997), the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the DoD Components' multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing. See also § 286.4(d) for greater detail on multitrack processing and compelling need meriting expedited processing.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security

classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The final response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F, this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part, e.g., 5 U.S.C. 552 (b)(1). Merely referring to a classification; to a "For Official Use Only" marking on the requested record; or to this part or a DoD component's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(7) In denying a request for records, in whole or in part, a DoD Component shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond to the initial request, the DoD Component shall acknowledge the request in writing within the 10 day period (20 days effective October 2, 1997), describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(2) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the component determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional

circumstances exist with respect to DoD Components' request backlogs. Exceptional circumstances do not include a delay that results from predictable component backlogs, unless the DoD Component demonstrates reasonable progress in reducing its backlog.

(3) Unusual circumstances that may justify delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.

(ii) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are requested in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DoD Components having a substantial subject-matter interest in the request.

(4) DoD Components may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the DoD Component reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth above, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(5) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. DoD Components are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies.

(6) As an alternative to the taking of formal extensions of time as described previously, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component or other Federal agency with the responsibility for the records requested. The period allowed

for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of Non-U.S. Government source.* (1) When a request is received for a record that falls under exemption 4, that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552) Exemption (b)(4)] [§ 286.12] shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DoD, and meets the requirements of 10 U.S.C. 2305(g), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and

exemption "(b)(3)" of the FOIA. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between a DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted in accordance with paragraph (h)(1) of this section, except for sealed bids which are opened and read to the public. The term proposal means any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal. Submitter notice, and analysis as appropriate, are required for exemption "(b)(4)" matters which are not specifically incorporated in 10 U.S.C. 2305(g).

(3) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority which prescribes criteria for submission, and it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, executive orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(4) The coordination provisions of this paragraph (h) also apply to any non-U.S. Government record in the possession and control of the Department of Defense from multinational organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this paragraph (h) may be made through Department of State, or the specific foreign embassy.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by

each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied at the initial stage shall be maintained for a period of six years to meet the statute of limitations requirement.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts, which are described in the following paragraphs, shall be used for depositing all FOIA receipts, except receipts for industrially funded and non appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially funded and non appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt account 3210 sale of publications and reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the receipt account series description found in Federal account symbols and titles.

(2) *Receipt account 3210 fees and other charges for services, freedom of information act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.24 Appeals

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to

grant expedited access to agency records, and for no record determinations when the requester considers such responses adverse in nature. Appeals of Office of the Secretary of Defense and Joint Staff determinations may be sent to the address in paragraph 2.a. of Appendix B to this part. If a request is merely misaddressed, and the receiving DoD Component simply advises the requester of such and refers the request to the appropriate DoD Component, this shall not be considered a no record determination.

(b) *Time of receipt.* An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained for a period of six years to meet the statute of limitations requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DoD Component has a significant number of appeals precluding a response determination within 20 working days, the appeals shall be processed in a multitask processing system, based at a minimum, on the three processing tracks established for initial requests. See § 286.4(c). All of the provisions of § 286.4(c) apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in paragraph § 286.24(g), the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall

be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.24(g), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters as set forth in paragraph (a) of this section.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Defense Office of General Counsel (Office of Legal Counsel).

§ 286.25 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non government source or records based on information obtained from a non government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a copy of the complaint by any means to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel.

Subpart F—Fee Schedule

§ 286.28 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, Section 954, (10 U.S.C. 2328), as amended by the Defense Technical Corrections Act of 1987 (10 U.S.C. 101 note).

(b) *Application.* (1) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in

the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7¹², which does not supersede the collection of fees under the FOIA. Nothing in this subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(a)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.29. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking, both manually and electronically for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b) (5) of this section for the definition of review, and paragraph (c)

¹² See footnote 1 to § 286.1 (a).

(5) of this section and § 286.29 (b) (2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable, the requester shall be notified that the copy provided is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed \$25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten

minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal \$24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See § 286.29 for further details regarding fees for computer searches.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph

(e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for an FOIA request total \$15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the

subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective

determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily

undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(iii) Components are reminded that the previously mentioned factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(4) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. \$15.00—\$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs

appropriate for the category determined by the Component.

(ii) Requesters should submit a fee declaration appropriate for the below categories.

(A) *Commercial*. Requesters should indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media*. Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others*. Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the previous conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2)(i) and (e)(2)(ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i. e., within 30 calendar days from the date of the billing), the Component may require the requester to

pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i. e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of paragraph (e) (2) (vii) of this section. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e) (2) (i) through (vii) of this section, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed \$25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters*. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.4 (h)).

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine

the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational Institution requesters*. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.4 (h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria of § 286.28 (d).

(5) *Non-commercial scientific institution requesters*. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in § 286.28(e)(3) and which is operated solely for the purpose of conducting scientific research, the results of which

are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria of § 286.28 (d) have been met.

(6) Components shall provide documents to requesters in § 286.28(e)(2) and (e)(5) for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.4 (h)). Fees shall be waived or reduced if the criteria of § 286.28(d) have been met.

(i) The term “representative of the news media” refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of “freelance” journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication though that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in § 286.28(e)(7)(i) and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be

considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) “Representative of the news media” does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the previous categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.4 (h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under § 286.28(d)(1). (See also § 286.28(e)(2)).

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating

requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (5 U.S.C. 5514 note).* The Debt Collection Act of 1982 (5 U.S.C. 5514 note) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.29 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DOD Component, or the Component has determined that the fee will be in excess of \$250 (see § 286.28 (e)).

(b) Search time—(1) Manual search.

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional	01–06/GS9–GS15 ...	25
Executive	07/GS16/ES1 and above.	45

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.*

Type	Cost per page (cents)
Pre-Printed material ..	02.
Office copy	15.
Microfiche	25.
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time* (in the case of commercial requesters).

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below.	12
Professional	01-06/GS9-GS15.	25
Executive	07/GS16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the

person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.*

Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.30 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.29 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph (a)(1) of this section which are greater than the costs that would be required for release of this same information under § 286.29 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or

(iii) The Component determines in accordance with § 286.28(d)(1) that such a waiver is in the interest of the United States.

(b) *Fee rates.*

(1) *Search time.*—(i) *Manual search.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below. (Minimum charge).	13.25 8.30

(ii) *Professional and executive* (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates). Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (a) (3) (I) (A) of this section) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search. See § 286.29 (b) (2) for further details regarding computer search.

(2) *Duplication.*

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents Engineering data (microfilm) Aperture cards	\$2.50
Silver duplicate negative, per card	.75

Type	Cost
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(3) *Review time.*

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below. (Minimum Charge).	13.25 8.30

(4) *Professional and executive* (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(5) *Other technical data records.* Charges for any additional services not specifically provided paragraph (c) of this section, consistent with DoD Instruction 7230.7, shall be made by Components at the following rates:

Minimum charge for office copy (up to six images)	\$3.50
Each additional image	0.10
Each typewritten page	3.50
Certification and validation with seal, each	5.20
Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports**§ 286.33 Reports control.**

(a) Each DoD component shall compile Freedom of Information Act statistics on a fiscal year basis beginning October 1, 1997, and report same to DFOISR, OASD(PA) no later than November 30 following the fiscal year's close. In turn, DFOISR, OASD(PA) will produce a consolidated DoD report for submission to the Attorney General.

(b) Existing DoD standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD 8320.1–M,¹³ “Data Administration Procedures”.

(c) The reporting requirement outlined in this subpart will be assigned Report Control Symbol DD–PA(A)1365.

§ 286.34 Annual report.

Annual report content. DD Form 2564 will be used to submit component

input. Instructions for completion follows:

(a) *Item 1. Initial request determinations.*

(1) *Total requests processed.* Enter the total number of initial FOIA requests responded to during the fiscal year.

(2) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office.)

(3) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(4) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(5) *“Other reason” responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an “other reason” response. Paragraph (b)(2) of this section explains the six possible “other reasons”.

(6) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of paragraphs (a)(2) through (a)(5) of this section.

(b) *Item 2. (1) Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraph (a)(3) and (a)(4) of this section.

(2) *“Other reasons” cited on initial determinations.* Identify the “Other Reason” response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *Transferred request.* Enter the number of times a request was transferred to another DoD component or Federal Agency for action.

(ii) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(iii) *Failure of requester to reasonably describe record.* Enter the number of times a FOIA request could not be acted upon since the requester failed to reasonably describe the record(s) being sought.

(iv) *Other failures by requester to comply with published rules and/or*

directives. Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) *Request withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(vi) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

(vii) *Total.* Enter the sum of paragraphs (b) (2) (i) through (b) (2) (vi) of this section. This number will be equal to or greater than the number in paragraph (a) (5) of this section since more than one reason may be claimed for each “other reason” response.

(c) *Item 3. Appeal determinations.*

(1) *Total appeal responses.* Enter the total number of FOIA appeals responded to during the fiscal year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the nine FOIA exemptions.

(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the nine FOIA exemptions.

(5) *“Other reason” responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an “other reason” response. Item (b) (2) of this section explains the six possible “other reasons”.

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of paragraphs (b) (2) through (b) (5) (vi) of this section.

(d) *Item 4. (1) Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (c) (3) and (c) (4) of this section.

(2) *“Other reasons” cited on appeal determinations.* Identify the “other reason” response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b) (3) of this section for description of “other reasons”.

(e) *Item 5. Statutes invoked on initial and appeal determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption identified in paragraphs (b) (1) and (d) (1) of this section. List the

¹³ See footnote 1 to § 286.1 (a).

statutes used to support each “(b) (3)” exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute’s use. Ensure you cite specific sections of acts invoked. To qualify as a “(b) (3)” exemption, the statute must contain clear wording that the information covered will not be disclosed. The total number of instances reported above will be equal to or greater than the total number of “(b) (3)” exemptions listed in paragraphs (b) (1) and (d) (1) of this section.

(f) *Item 6. Number and median age of cases pending as of September 30 of the preceding year.*

(1) *Total number of initial requests pending as of September 30, preceding year.* Enter the total number of initial FOIA requests pending (open) as of the day before the current reporting period began (September 30 previous to the reported period, fiscal year).

(2) *Median age of requests pending as of September 30 of the preceding year.* Enter the median age of pending FOIA requests as of the day before the current reporting period began (September 30 previous to the reported period, fiscal year).

(3) *Examples.* (i) Given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th. The total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(ii) Given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th. The total requests pending is six (6). The median age (days) of open requests 40 days (the mean (average) of the two middle numbers in the set, in this case the average of middle values 30 and 50).

(g) *Item 7. Number of initial requests received during the fiscal year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(h) *Item 8. Types of requests processed and median age.* Information is reported for three types of initial requests completed during the reporting period: *simple; complex; and expedited processing.* The following items of information are reported for these requests:

(1) *Total number of initial requests.* Enter the total number of initial requests processed during the reporting period (fiscal year) by type (simple, complex

and expedited processing) in the appropriate row on the form.

(2) *Median age (days).* Enter the median number of days required to process each type of case (simple, complex and expedited processing) during the period in the appropriate row on the form.

(3) *Example.* Given seven initial requests, multitask—Simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(i) *Item 9. Fees collected from the public.* Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

(j) *Item 10—(1) FOI program costs.*

(i) *Personnel costs.* Paragraphs (j) (1) (i) (A) and (j) (1) (i) (B) of this section are used to capture man-years and salary costs of personnel primarily involved in planning, program management and/or administrative handling of FOIA requests. Determine salaries for military personnel by using the Composite Standard Pay Rates (DoD 7220.9-M).¹⁴ For civilian personnel use Office of Personnel Management salary table and add 16% for benefits. A sample computation is shown:

Grade	Number of personnel	Salary	% of time	Costs
O-5	1	\$90,707	10	\$9,071
O-1	1	37,545	10	3,755
E-7	1	44,375	50	22,188
Totals	3		70	35,014

(A) *Estimated man-years.* Add the total percentages of time for personnel involved in administering the FOI program and divide by 100. In the example shown above, (10+10+50)/100=.7 man-years.

(B) *Man-year costs.* Total costs associated with salaries of individuals involved in administering FOIA program. In the example shown, the total cost is \$35,014.

(C) *Estimated man-hour costs by category.* This section accounts for all other personnel not reported in paragraphs (j)(1)(i)(A) and (j)(1)(i) (B) of this section who are involved in processing FOIA requests. Enter the total hourly cost for each of the five areas described.

(1) *Search time.* This includes only those direct costs associated with time spent looking for material that is

responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) *Review and excising.* This includes all direct costs incurred during the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes excising documents to prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(3) *Coordination and approval.* This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) *Correspondence/form preparation.* This includes all costs involved in typing responses, filling out forms, etc., to respond to a FOIA request.

(5) *Other activities.* This includes all other processing costs not covered above, such as processing time by the mail room.

(6) *Total.* Enter the sum of paragraphs (j)(1)(i)(C)(1) through (j)(1)(i)(C)(5) of this section.

(D) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25% of the sum of paragraphs (j)(1)(i)(B) and (j)(1)(i)(C) of this section.

(E) *Total.* Enter the sum of paragraphs (j)(1)(i)(B), (j)(1)(i)(C), and (j)(1)(i)(D) of this section.

(ii) *Other case-related costs.* Using the fee schedule, enter the total amounts

¹⁴ See footnote 1 to § 286.1 (a).

incurred in each of the areas in the following paragraphs:

(A) *Computer search time.* This includes cost of central processing unit, input/output devices, memory, etc. of the computer system used, as well as the wage of the machine's operator/programmer.

(B) *Office copy reproduction.* This is the cost of reproducing normal documents with office copying equipment.

(C) *Microfiche reproduction.* This is the cost of reproducing records and providing microfiche.

(D) *Printed records.* This is the cost of providing reproduced copies of forms, publications, or reports.

(E) *Computer copy.* This is the actual cost of duplicating magnetic tapes, floppy diskettes, computer printouts, etc.

(F) *Audiovisual materials.* This is the actual cost of duplicating audio or video tapes or like materials, to include the wage of the person doing the work.

(G) *Other.* Report all other costs which are easily identifiable, such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(H) *Subtotal.* Enter the sum of paragraphs (j)(1)(ii)(A) through (j)(1)(ii)(G) of this section

(I) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25% of paragraph (j) (1) (ii) (H) of this section.

(J) *Total.* Enter the sum of paragraphs (j) (1) (ii) (H) and (j) (1) (i) (I) of this section.

(iii) *Cost of routine requests processed.* This item is optional. Some reporting activities may find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. Care should be exercised so that costs are comprehensive to include a 25% overhead, yet are not duplicated elsewhere in the report. Multiply the number of routine requests processed times the cost factor to compute this amount.

(iv) *Total costs.* Enter the sum of paragraphs (j) (1) (i) through (j) (1) (iii) of this section.

(2) *Number of full time staff.* Enter the number of people in your agency that process FOIA actions full time.

(k) *Item 11. Date report prepared.* Enter the date the report was completed and signed by an approving official.

(l) *Item 12. Name, address & phone number of agency.* Enter data for the agency or activity that prepared the report.

(m) *Item 13. Signature, typed name, and title of approving official.* Enter the name and title of the individual approving the report. Approval of the report is indicated by the official's signature.

Subpart H—Education and Training

§ 286.37 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOIA matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive

5400.7, the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Unified Combatant commands—Processing Procedures for FOIA Appeals

1. General

a. In accordance with DoD Directive 5400.7¹ and this part, the Unified Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DoD Directive 5100.3².

b. The policy change above authorizes and requires the Unified Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10³ and to forward directly to the OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. Responsibilities of Commands

Unified Combatant Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOIA cases to the OASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Combatant Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the OASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301-1400.

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² See footnote 1 of section 1.a. of this appendix.

³ See footnote 1 of section 1.a. of this appendix.

i. Upon request, submit to OASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI requests

The fees charged for requested records shall be in accordance with subpart F of this part.

4. Communications

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Combatant Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting requirements

a. The Unified Combatant Commands shall submit to the OASD(PA) an annual report. The instructions for the report are outlined in subpart G of this part.

b. The annual report shall be submitted in duplicate to the OASD(PA) not later than each November 30. This reporting requirement is assigned Report Control Symbol DD-PA(A) 1365.

Appendix B to Part 286—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests

a. *Office of the Secretary of Defense and the Joint Staff.* Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, DC 20301-1400.

- (1) Executive Secretariat
- (2) Under Secretary of Defense (Policy)
- (i) Assistant Secretary of Defense (International Security Affairs)
- (ii) Assistant Secretary of Defense (International Security Policy)
- (iii) Assistant Secretary of Defense (Special Operations & Low Intensity Conflict)
- (iv) Assistant Secretary of Defense (Strategy & Requirements)
- (v) Deputy to the Under Secretary of Defense (Policy Support)
- (vi) Director of Net Assessment Defense Security Assistance Agency
- (viii) Defense Technology Security Administration

(3) Under Secretary of Defense (Acquisition & Technology)

- (i) Deputy Under Secretary of Defense (Logistics)
- (ii) Deputy Under Secretary of Defense (Advanced Technology)
- (iii) Deputy Under Secretary of Defense (Acquisition Reform)
- (iv) Deputy Under Secretary of Defense (Environmental Security)
- (v) Deputy Under Secretary of Defense (Space)
- (vi) Deputy Under Secretary of Defense (International & Commercial Programs)
- (vii) Deputy Under Secretary of Defense (Industrial Affairs & Installations)
- (viii) Assistant to the Secretary of Defense (Nuclear, Chemical & Biological Defense Programs)
- (ix) Director, Defense Research & Engineering
- (x) Director, Small & Disadvantaged Business Utilization
- (xi) Director, Defense Procurement
- (xii) Director, Test Systems Engineering & Evaluation
- (xiii) Director, Strategic & Tactical Systems
- (xiv) Defense Evaluation Support Activity
- (xv) DoD Radiation Experiments Command Center
- (xvi) On-Site Inspection Agency
- (4) Under Secretary of Defense (Comptroller)
- (5) Director Program Analysis and Evaluation
- (6) Under Secretary of Defense (Personnel & Readiness)
 - (i) Assistant Secretary of Defense (Health Affairs)
 - (ii) Assistant Secretary of Defense (Legislative Affairs)
 - (iii) Assistant Secretary of Defense (Public Affairs)
 - (iv) Assistant Secretary of Defense (Command, Control, Communications & Intelligence)
 - (v) Assistant Secretary of Defense (Reserve Affairs)
- (7) General Counsel, Department of Defense
- (8) Director, Operational Test and Evaluation
- (9) Assistant to the Secretary of Defense (Intelligence Oversight)
- (10) Defense Advanced Research Projects Agency
- (11) Ballistic Missile Defense Organization
- (12) Defense Systems Management College
- (13) National Defense University
- (14) Armed Forces Staff College
- (15) Department of Defense Dependents Schools
- (16) Uniformed Services University of the Health Sciences
- (17) Armed Forces Radiobiology Research Institute
- (18) Washington Headquarters Services

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR part 518, Appendix B. Send requests to the Freedom of Information and Privacy Acts Office, SAIS-IDP-F/P, Suite 201, 1725 Jefferson Davis Hwy, Arlington, VA 22202-4102, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Chief of Naval Operations, N-09B30, Room 5E521, 2000 Navy, Pentagon, Washington, DC 20350-2000, for records of the Headquarters, Department of the Navy, and to Commandant of the Marine Corps, (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380-1775, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. *Department of the Air Force.* Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to OL-P, 11CS/SCSR(FOIA), Room 4A1088C, 1000 Air Force, Pentagon, Washington, DC 20330-1000.

e. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060-6219, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. *Defense Information Systems Agency (DISA).* DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOI requests to Defense Information Systems Agency, Regulatory/General Counsel, 701 South Courthouse Road, Arlington, VA 22204-2199.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: SVI-1, Washington, DC 20340-5100.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Defense Investigative Service, Office of Information and Public Affairs, 1340 Braddock Place, Alexandria, VA 22314-1651.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA/CAAV, 8725 John J. Kingman Road, Suite 2533, Alexandria, VA 22060-6221.

j. *National Imagery and Mapping Agency (NIMA).* FOI requests for NIMA records may be sent to the National Imagery and Mapping Agency, General Counsel for Office of Information & Privacy, Mail Stop A-7, 8613 Lee Highway, Fairfax, VA 22031-2137.

k. *Defense Special Weapons Agency (DSWA).* FOI requests for DSWA records may be sent to the Defense Special Weapons Agency, Public Affairs Office, Room 113, 6801 Telegraph Road, Alexandria, VA 22310-3398.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, FOIA/PA Services,

N5P5, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755-6248.

m. *Office of the Inspector General, Department of Defense (IG, DoD)*. FOI requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Chief FOI/PA Office, 400 Army Navy Drive, Room 405, Arlington, VA 22202-2884.

n. *Defense Finance and Accounting Service (DFAS)*. DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to Defense Finance and Accounting Service, Directorate for External Affairs & Management Support, Crystal Mall 3, Room 416, Arlington, VA 22240-5291, for records of its Headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

o. *National Reconnaissance Office (NRO)*. FOI requests for NRO records may be sent to the National Reconnaissance Office, FOIA Officer, 1040 Defense Pentagon, Room 4C1000, Washington, DC 20301-1040.

3. Other Addresses

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated:

a. *Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS)*. Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045-6900.

b. *Chairman, Armed Services Board of Contract Appeals (ASBCA)*. Chairman, Armed Services Board of Contract Appeals, Skyline Six Rm 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208.

c. *U.S. Central Command*. U.S. Central Command/CCJ1/AG, MacDill Air Force Base, FL 33608-7001.

d. *U.S. European Command*. Headquarters, U.S. European Command/ECJ1-AA(FOIA) Unit 30400 Box 1000, APO AE 09128-4209.

e. *U.S. Southern Command*. U.S. Commander-in-Chief, Southern Command, Unit 1110, SCJ1-A, APO AA 34003-0007.

f. *U.S. Pacific Command*. U.S. Commander-in-Chief, Pacific Command, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861-5025.

g. *U.S. Special Operations Command*. U.S. Special Operations Command, Chief, Command Information Management Branch, ATTN: SOJ6-SI, 7701 Tampa Point Blvd., MacDill Air Force Base FL 33621-5323.

h. *U.S. Atlantic Command*. Commander-in-Chief, Atlantic Command, Code J02P, Norfolk, VA 23511-5100.

i. *U.S. Space Command*. Commander-in-Chief, U.S. Space Command, Command Records Manager/FOIA/PA Officer, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914-5400.

j. *U.S. Transportation Command*. U.S. Commander-in-Chief, Transportation Command, ATTN: TCIM-F, 508 Scott Drive, Scott Air Force Base, IL 62225-5357.

k. *U.S. Strategic Command*. U.S. Commander-in-Chief, Strategic Command, Attn: J0734, 901 SAC Blvd., Suite 1E5, Offutt AFB, NE 68113-6073.

4. National Guard Bureau

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, ATTN: NGB-ADM, Room 2C363, 2500 Army Pentagon, Washington, DC 20310-2500.

5. Miscellaneous

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the

Assistant Secretary of Defense (Public Affairs), Directorate for Freedom of Information and Security Review, Room 2C757, 1400 Defense Pentagon, Washington, DC 20301-1400.

Appendix C to Part 286—Other Reason Categories

1. Transferred requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 of this appendix is shifted from one Component to another, or to another Federal Agency.

2. Lack of records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of requester to reasonably describe record.

This category is specifically based on section 552(a)(3)(a) of the FOIA.

4. Other failures by requesters to comply with published rules or directives

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. *Request withdrawn by requester*. This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. *Not an agency record*. This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

BILLING CODE 5000-04-P

Appendix D to Part 286—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086)

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST <i>Please read instructions on reverse before completing form.</i>					
1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)		
		a. INITIAL		b. APPEAL	
4. CLERICAL HOURS (E-9/GS-8 and below)			TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH				\$12.00 =	*
b. REVIEW/EXCISING					**
c. CORRESPONDENCE AND FORMS PREPARATION					
d. OTHER ACTIVITY					
5. PROFESSIONAL HOURS (O-1 - O-6/GS-9 - GS-15)			TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH				\$25.00 =	*
b. REVIEW/EXCISING					**
c. COORDINATION/APPROVAL/DENIAL					
d. OTHER ACTIVITY					
6. EXECUTIVE HOURS (O-7 - GS-16/ES 1 and above)			TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH				\$45.00 =	*
b. REVIEW/EXCISING					**
c. COORDINATION/APPROVAL/DENIAL					
7. COMPUTER SEARCH			TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. MACHINE HOURS				\$12.00 =	*
b. PROGRAMMER/OPERATOR TIME					*
(1) Clerical					*
(2) Professional					*
8. OFFICE COPY REPRODUCTION			NUMBER (1)	RATE (2)	COST (3)
a. PAGES REPRODUCED				X .15 =	*
9. MICROFICHE REPRODUCTION			NUMBER (1)	RATE (2)	COST (3)
a. MICROFICHE REPRODUCED				X .25 =	*
10. PRINTED RECORDS			TOTAL PAGES (1)	RATE (2)	COST (3)
a. FORMS				.02 =	*
b. PUBLICATIONS					*
c. REPORTS					*
11. COMPUTER COPY			NUMBER (1)	ACTUAL COST (2)	COST (3)
a. TAPE				=	*
b. PRINTOUT					*
12. AUDIOVISUAL MATERIALS			NUMBER (1)	ACTUAL COST (2)	COST (3)
a. MATERIALS REPRODUCED				X =	*
13. For FOI Office Use Only					
a. SEARCH FEES PAID			f. TOTAL COLLECTABLE COSTS		
b. REVIEW FEES PAID			g. TOTAL PROCESSING COSTS		
c. COPY FEES PAID			h. TOTAL CHARGED		
d. TOTAL PAID			i. FEES WAIVED/REDUCED (X one)		
e. DATE PAID (YYMMDD)			Yes No		
* Chargeable to all requesters after application of all waiver criteria. ** Chargeable only to commercial requesters.					

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent in reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

- Multiply the total hours by the hourly rates and enter the cost figures. Computer search will be based on direct cost of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used.

8. OFFICE COPY REPRODUCTION - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. MICROFICHE REPRODUCTION - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. PRINTED RECORDS - Enter total pages in each category. The categories are:

Forms (Include any type of printed forms)

Publications (Include any type of bound document, such as directives, regulations, studies, etc.)

Reports (Include any type of memorandum, staff action paper, etc.)

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. COMPUTER COPY - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. AUDIOVISUAL MATERIALS - Duplication cost is the actual cost of reproducing the material, including the wages of the person doing the work.

13. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or the "No" block.

Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Data (DD Form 2086-1)

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA												
Please read instructions on reverse before completing form.												
1. REQUEST NUMBER		2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)								
		a. INITIAL	b. APPEAL									
4. CLERICAL HOURS (E-9/GS-8 and below)			TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)						
a. SEARCH				X	\$ 13.25	=	*					
b. REVIEW/EXCISING							*					
c. CORRESPONDENCE AND FORMS PREPARATION												
d. OTHER ACTIVITY												
e. MINIMUM CHARGE							\$ 8.30					
5. PROFESSIONAL HOURS (O-1 - O-6/GS-9 - GS/GM-15)			TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)						
a. SEARCH				X	ACTUAL HOURLY RATE	=	*					
b. REVIEW/EXCISING							*					
c. COORDINATION/APPROVAL/DENIAL												
d. OTHER ACTIVITY												
e. MINIMUM CHARGE							1/2 HOURLY RATE					
6. EXECUTIVE HOURS (O-7/GM-16/ES 1 and above)			TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)						
a. SEARCH				X	ACTUAL HOURLY RATE	=	*					
b. REVIEW/EXCISING							*					
c. COORDINATION/APPROVAL/DENIAL												
d. MINIMUM CHARGE							1/2 HOURLY RATE					
7. COMPUTER SEARCH			TOTAL HOURS (1)				HOURLY RATE (2)		COST (3)			
a. MACHINE HOURS				X	ACTUAL HOURLY RATE	=	*					
b. PROGRAMMER/OPERATOR TIME							*					
- Clerical							\$13.25 OR MINIMUM					
- Professional							ACTUAL OR MINIMUM					
8. REPRODUCTION			NUMBER (1)				RATE (2)		COST (3)			
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS				X	\$ 2.50	=	*					
b. ENGINEERING DATA (Microfilm)							*					
- Aperture cards							.75					
-- Silver duplicate negative, per card							.85					
-- When keypunched and verified, per card							.65					
-- Diazo duplicate negative, per card							.75					
-- When keypunched and verified, per card							.50					
- 35 mm roll film, per frame							.45					
- 16 mm roll film, per frame							1.50					
- Paper prints (engineering drawings), each							.10					
- Paper reprints of microfilm indices, each												
c. AUDIOVISUAL MATERIALS (Insert actual cost in block (2))												
d. OTHER TECHNICAL DATA RECORDS												
Charges for any additional services not specifically provided above shall be made by components at the following rates:												
- Minimum charge for office copy (up to six images)							X	3.50	=	*		
- Each additional image				.10								
- Each typewritten page				3.50								
- Certification and validation with seal, each				5.20								
- Hand-drawn plots and sketches, each hour or fraction thereof				12.00								
* Chargeable to all requesters.												
9. For FOI Office Use Only												
a. SEARCH FEES PAID		d. TOTAL PAID		g. TOTAL PROCESSING COSTS								
b. REVIEW FEES PAID		e. DATE PAID (YYMMDD)		h. TOTAL CHARGED								
c. COPY FEES PAID		f. TOTAL COLLECTABLE COSTS		i. FEES WAIVED/REDUCED (X one)		YES NO						

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. REQUEST NUMBER - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. TYPE OF REQUEST - Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED - Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. PROFESSIONAL HOURS - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. EXECUTIVE HOURS - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. COMPUTER SEARCH - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

- Multiply the total hours by the computer hourly rates and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. REPRODUCTION - Enter the number of pages or items reproduced.

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. FOR FOI OFFICE USE ONLY -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "YES" block or an "X" in the "NO" block.

Appendix F to Part 286—Annual Report Freedom of Information Act (DD Form 2564)

ANNUAL REPORT FREEDOM OF INFORMATION ACT										REPORT CONTROL SYMBOL
1. INITIAL REQUEST DETERMINATIONS										
a. TOTAL REQUESTS		b. GRANTED IN FULL		c. DENIED IN PART		d. DENIED IN FULL		e. "OTHER REASONS"		f. TOTAL ACTIONS
2a. EXEMPTIONS INVOKED ON INITIAL REQUEST DETERMINATIONS										
(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)		
2b. "OTHER REASONS" CITED ON INITIAL REQUEST DETERMINATIONS										
1	2	3	4	5	6	TOTAL				
3. APPEAL DETERMINATIONS										
a. TOTAL REQUESTS		b. GRANTED IN FULL		c. DENIED IN PART		d. DENIED IN FULL		e. "OTHER REASONS"		f. TOTAL ACTIONS
4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS										
(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)		
4b. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS										
1	2	3	4	5	6	TOTAL				
5. b (3) STATUTES INVOKED ON INITIAL AND APPEAL DETERMINATIONS (Continue on plain paper as necessary)										
(1)(b)(3) STATUTE CLAIMED		NUMBER OF INSTANCES		COURT UPHELD? (Yes or No)		CONCISE DESCRIPTION OF MATERIAL WITHHELD				

DD FORM 2564,

PREVIOUS EDITION IS OBSOLETE.

Designed Using Perform Pro, WHS/DIOR

6. NUMBER AND MEDIAN AGE OF CASES PENDING AS OF SEPTEMBER 30 OF THE PRECEDING YEAR			
a. TOTAL INITIAL REQUESTS PENDING (<i>open</i>) AS OF SEPTEMBER 30			
b. MEDIAN AGE (<i>in days</i>) OF OPEN INITIAL REQUESTS			
7. TOTAL NUMBER OF INITIAL REQUESTS RECEIVED DURING THE FISCAL YEAR			
8. TYPES OF INITIAL REQUESTS PROCESSED AND MEDIAN AGE			
	TOTAL NUMBER OF CASES	MEDIAN AGE (<i>Days</i>)	
a. SIMPLE			
b. COMPLEX			
c. EXPEDITED PROCESSING			
9. TOTAL AMOUNT COLLECTED FROM THE PUBLIC			
10a. FOI PROGRAM COSTS			
I. PERSONNEL COSTS		II. OTHER CASE-RELATED COSTS	
A. ESTIMATED MANYEARS		A. COMPUTER SEARCH TIME	\$
B. MANYEAR COSTS	\$	B. OFFICE COPY REPRODUCTION	\$
C. ESTIMATED MANHOUR COSTS BY		C. MICROFICHE REPRODUCTION	\$
(1) Search Time	\$	D. PRINTED RECORDS	\$
(2) Review and Excluding	\$	E. COMPUTER COPY	\$
(3) Coordination and Approval	\$	F. AUDIOVISUAL MATERIALS	\$
(4) Correspondence/Form Preparation	\$	G. OTHER	\$
(5) Other Activities	\$	H. SUBTOTAL (A through G)	\$
(6) Total ((1) through (5))	\$	I. OVERHEAD (25% x H)	\$
D. OVERHEAD ((B + C) x 25%)	\$	J. TOTAL (H + I)	\$
E. TOTAL (B through D)	\$		
III. COST OF ROUTINE REQUESTS PROCESSED		IV. TOTAL COSTS (I through III)	
\$		\$	
10b. NUMBER OF FULL TIME STAFF			
12. AGENCY			
a. NAME			
b. ADDRESS (<i>Include ZIP Code</i>)			
c. TELEPHONE NUMBER (<i>Include Area Code</i>)			
11. DATE REPORT PREPARED			
13. APPROVING OFFICIAL			
a. SIGNATURE			
b. TYPED NAME (<i>Last, First, Middle Initial</i>)			
c. TITLE			

DD FORM 2564 (BACK).

Appendix G—DoD Freedom of Information Act Program Components

a. Office of the Secretary of Defense/Joint Staff/Unified Combatant Commands, Defense Agencies, and the DoD Field Activities

b. Department of the Army
c. Department of the Navy
d. Department of the Air Force
e. Defense Information Systems Agency
f. Defense Contract Audit Agency
g. Defense Intelligence Agency
h. Defense Investigative Service
i. Defense Logistics Agency
j. National Imagery and Mapping Agency
k. Defense Special Weapons Agency
l. National Security Agency
m. Office of the Inspector General, Department of Defense
n. Defense Finance and Accounting Service
o. National Reconnaissance Office
Dated: February 6, 1997.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 97-3412 Filed 2-18-97; 8:45 am]
BILLING CODE 5000-04-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

[RIN 1006-AA38]

Acreage Limitation Rules and Regulations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: On December 18, 1996, the Bureau of Reclamation (Reclamation) published in 61 FR 66827, Dec. 18, 1996, an advance notice of proposed rulemaking requesting public comment on possible revisions to existing rules and regulations regarding the acreage limitation provisions of the Reclamation Reform Act of 1982 (RRA). During a recently completed RRA rulemaking activity, 61 FR 66754, Dec. 18, 1996, the Department of the Interior (Department) received a number of comments regarding the compliance of certain large trusts with the acreage limitation provisions of the RRA. Comments expressed a variety of viewpoints, including the assertion that some trusts with landholdings (owned and leased land) in excess of 960 acres may circumvent the requirements of Federal reclamation law. To help facilitate the examination of the application of the acreage limitation provisions to trusts with large landholdings, Reclamation will host a meeting at which interested parties will convene in a round table

arrangement to explore this issue. The public is invited to attend this session. This meeting is not intended as a formal hearing for the submission of comments. Rather, it is intended as an informal discussion so that those in attendance will be better prepared to submit comments on the advance notice of proposed rulemaking. To further facilitate the submittal of comments, the comment period has been extended to April 17, 1997.

DATES: The public meeting will be held on March 14, 1997, at 10:00 a.m. The comment period on the advance notice of proposed rulemaking is extended to April 17, 1997.

ADDRESSES: The public meeting will be held at The Best Western Expo Inn, 1413 Howe Avenue, Sacramento, CA. Written comments are to be mailed to the Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Steven Richardson, Bureau of Reclamation, Mail Code W-1500, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208-4291.

SUPPLEMENTARY INFORMATION: In the December 18, 1996, Federal Register notice, Reclamation requested comments and suggestions on:

- Whether to limit nonfull-cost water deliveries to large trusts with landholdings in excess of 960 acres (or other applicable acreage thresholds under the RRA);
- The criteria used to determine whether landholdings in excess of 960 acres, operated under a trust arrangement, should be eligible to receive nonfull-cost water deliveries;
- Whether nonfull-cost water deliveries to such landholdings are consistent with the principles of Federal reclamation law and sound public policy and, if not, how to implement a limit on such deliveries;
- What procedures might ensure fairness in transition to new rules that would limit large trusts to 960 acres for nonfull-cost water, and what safeguards would be necessary to avoid such trusts from adopting some other, as yet unregulated form, to escape acreage limitations; and
- The extent of the Department's statutory authority to address these issues, including, the extent of the Department's legal authority to regulate: (a) future trusts, (b) trusts established from 1982 to the present, and (c) trusts established prior to 1982.

Dated: February 11, 1997.

J. Austin Burke,

Director, Program Analysis Office.

[FR Doc. 97-3962 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-94-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[GEN Docket No. 91-2, DA 97-308]

Interactive Video and Data Services

AGENCY: Federal Communications Commission.

ACTION: Request for comments on waiver request.

SUMMARY: This action seeks additional comment on waiver of the three year construction benchmark that IVDS lottery license winners must meet by March 29, 1997. It is necessary for the Commission to receive comment on the waiver request in order to determine if the waiver should be granted. The effect of the action will be to seek comment on the requested rule waiver.

DATES: Comments are due February 25, 1997; reply comments are due March 3, 1997.

ADDRESSES: Comments and reply comments should be sent or delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Att'n Private Wireless Division, Wireless Telecommunications Bureau.

FOR FURTHER INFORMATION CONTACT: William T. Cross of the Wireless Telecommunications Bureau at (202) 418-0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released February 10, 1997. The full text of this action 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 may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Public Notice

1. In the Report and Order in GEN Docket No. 91-2, the Commission concluded that a major concern of potential users of this service was that an applicant who obtained a license through the lottery process may not actually build the IVDS system. The IVDS rules require, therefore, that licensees must construct a sufficient

number of stations in three years to cover 30 percent of the population or land area, and in five years to cover 50 percent of the population or land area (see 47 CFR 95.833).

2. Maritime Communications Corporation, an IVDS licensee in the Dallas, TX MSA, recently filed a request for waiver of the rule requiring IVDS licensees to use type accepted equipment or alternatively, a waiver of the three year construction requirement for its IVDS system. Bay Interactive Ventures Ltd., and IVDS licensee in the Los Angeles, CA MSA, also filed a request for waiver of the three year construction requirement for its IVDS system. Both licensees cite the pendency of a petition for rule making, RM-8951, the lack of commercially available equipment and the lack of service applications they could deploy over their systems as reasons that we should waive the three year construction benchmark.

3. Interested parties may file comments concerning these waiver requests on or before February 25, 1997. Reply comments are due on or before March 3, 1997. Comments and reply comments should be sent or delivered to: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, Att'n Private Wireless Division, Wireless Telecommunications Bureau. A copy should also be sent or delivered to: Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, Stop Code 2000-F, Federal Communications Commission, 2025 M Street, N.W., Washington, D.C. 20554. Finally, a copy should be sent or delivered to the Commission's duplicating contractor: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone number (202) 857-3800). Copies of the filings may be obtained from ITS.

4. A copy is also available for public inspection during regular business hours in the Private Wireless Division, Wireless Telecommunications Bureau, Room 8010, 2025 M Street, N.W., Washington, D.C. 20554.

List of Subjects in 47 CFR 95

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-4029 Filed 2-18-97; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 97-D300]

Defense Federal Acquisition Regulation Supplement; Ball and Roller Bearings; Waiver

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement 10 U.S.C. 2534(d)(6), which provides that the Secretary of Defense may waive the domestic source restrictions of 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used.

DATE: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 21, 1997, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 97-D300 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534(a) limits the procurement of certain items to domestic sources; 10 U.S.C. 2534(g)(1) provides that this limitation does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

10 U.S.C. 2534(d)(6) provides that the Secretary of Defense may waive the limitation in 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used.

This DFARS rule proposes to implement the waiver authority of 10 U.S.C. 2534(d)(6) with regard to the acquisition of ball and roller bearings, because 10 U.S.C. 2534(g)(2), added by Section 806(d) of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), makes the broader exception at 10 U.S.C. 2534(g)(1) inapplicable to ball and roller bearings.

B. Regulatory Flexibility Act

The proposed rule 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.* Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule is being considered by the agency to implement 10 U.S.C. 2534(d)(6) with regard to the acquisition of ball and roller bearings. 10 U.S.C. 2534(d)(6) provides that the Secretary of Defense may waive the domestic source restrictions of 10 U.S.C. 2534(a) for a procurement that is for an amount less than the simplified acquisition threshold, when simplified acquisition procedures are being used. Because of other statutory provisions that pertain to the acquisition of ball and roller bearings, the waiver authority in this proposed rule may be used only if (1) ball and roller bearings or bearing components are the end items being purchased, and (2) the ball and roller bearings or bearing components are commercial items, or no fiscal year 1996 or 1997 funds are being used. It is estimated that 11 small businesses could be affected by this rule. The rule imposes no new reporting, recordkeeping, or compliance requirements for contractors or offerors; and does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will fully implement the provisions of 10 U.S.C. 2534(d)(6).

A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy of the analysis from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97-D300 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule contains no information collection requirements that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,
*Executive Editor, Defense Acquisition
Regulations Council.*

Therefore, 48 CFR Part 225 is
amended as follows:

1. The authority citation for 48 CFR
Part 225 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

2. Section 225.7019–3 is amended by
redesignating paragraphs (a)(2) and
(a)(3) as paragraphs (a)(3) and (a)(4),
respectively, and by adding a new
paragraph (a)(2) to read as follows:

225.7019–3 Waiver.

(a) * * *

(2) If the acquisition is for an amount
less than the simplified acquisition
threshold and simplified acquisition
procedures are being used.

* * * * *

[FR Doc. 97–4042 Filed 2–18–97; 8:45 am]

BILLING CODE 5000–04–M

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Friday, February 28, 1997. The meeting will be held on the third floor of the Arsenal (enter through the Cabildo on Jackson Square), 701 Chartres Street, New Orleans, Louisiana, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior and Agriculture; the heads of four designated Federal agencies; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

- I. Chairman's Welcome
- II. Swearing in of New Member
- III. Chairman's Report
- IV. Report of the Task Force on Regulations
- V. Member Involvement in Council Activities
- VI. Preservation Policy Issues
- VII. Executive Director's Report
- VIII. New Business
- IX. Adjourn.

Note: The meetings of the Council are open to the public. If you need special

accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202-606-8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT:

Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: February 12, 1997.

John M. Fowler,

Acting Executive Director.

[FR Doc. 97-3995 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for and revision to a currently approved information collection in support of the CSREES National Research Initiative Competitive Grants Program (NRICGP).

DATES: Comments on this notice must be received by April 21, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS:

Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, Washington, DC 20250-2240, (202) 401-1766. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: CSREES/National Research Initiative Competitive Grants Program.
OMB Number: 0524-0033.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: USDA/CSREES administers the NRICGP, under which competitive, peer-reviewed research grants of a high-priority nature are awarded. This program is authorized pursuant to the authorities contain in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)) (1965 Act, as amended).

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, an NRICGP solicitation is issued requesting proposals for various research areas. Applicant submit proposals for these various research areas following the format outlined in the yearly Program Description. These proposals are evaluated by peer review panels and awarded on a competitive basis.

The NRICGP has been using the "Application Kit" (OMB Approval 0525-0022) developed for general CSREES use since the inception of the NRICGP in Fiscal Year 1991. This kit includes the necessary forms and instructions to applicants requesting support under various competitive and noncompetitive funding programs sponsored by CSREES. In 1994, the NRICGP sought and received approval of three forms specific to the needs of the NRICGP, including one form used by CSREES for meeting the compliance requirements of the National Environmental Policy Act of 1969.

Forms CSREES-1232, "Project Summary," CSREES-1233, "Conflict of Interest," and CSREES-1234, "National Environmental Policy Act Exclusions Form" are mainly used for proposal evaluation and administration. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys

or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied scientific research.

The following information has been collected and will continue to be collected:

CSREES-1232—Proposal

Identification: Lists the Principal Investigator(s) and their institution(s), the proposal type (distinguishes among funding mechanisms), project title, and key words, along with a project summary which allows for quick screening and assignment of proposals to peer reviewers.

CSREES-1233—Identification of Conflicts of Interest: Lists the person(s) who are in conflict of interest with the applicant(s). This has been used when selecting peer review panels to assure objective reviews, and has been revised to specifically cite potential conflicts of interest by category to better meet the requirements set out in 7 CFR 3411.12.

CSREES-1234—Collection of Environmental Impact Information: Allows identification of whether or not the proposal fits one of the exclusions listed for compliance with the National Environmental Policy Act (7 CFR part 3407). This information has been and will continue to be used in determinations as to whether or not further action is needed to meet the requirements of this Act.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one and one-quarter hour per response.

Respondents: Non-profit institutions, individuals, businesses, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Responses per Respondent: 3,200 for the CSREES-1232 and CSREES-1233; 4,800 for the CSREES-1234.

Estimated Total Annual Burden on Respondents: 4,400 hours, broken down by: 1,600 hours for the CSREES-1232 (one-half hour per 3,200 respondents); 1,600 hours for the CSREES-1233 (one-half hour per 3,200 respondents); and 1,200 hours for the CSREES-1234 (one-quarter hour per 4,800 respondents).

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401-1302. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate

of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, Washington, DC. 20250-2240, (202) 401-1766. E-mail: OEP@reeusda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, on this 7th day of February, 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97-3993 Filed 2-18-97; 8:45 am]

BILLING CODE 3410-22-M

Foreign Agricultural Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's intention to request an extension for, and a revision to, a currently approved information collection in support of the regulations governing low-tier duty entry of raw-cane sugar into the U.S. domestic market.

DATES: Comments on this notice must be received by April 21, 1997 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Mail or deliver comments to Stephen C. Hammond, Team Leader, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250-1021. For further information, contact Mr. Hammond at telephone number (202) 720-1061.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Quota Eligibility
OMB NUMBER: 0551-0014.

Expiration date of approval: April 30, 1997.

Type of request: Extension and revision of a currently approved information collection.

Abstract: The Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture to establish the quantity of raw cane sugar which may be entered at the low-tier rates of the tariff-rate quota (TRQ). The terms under which Certificates of Quota Eligibility will be issued to foreign countries that have been allocated a share of the TRQ are set forth in 15 C.F.R. Part 2011, Subpart A, allocation of Tariff-rate quota on Imported Sugars, Syrups, and Molasses. The authority for Certificates of Quota Eligibility is additional U.S. note 5(b)(iv) to chapter 17 of the HTS.

The regulations, promulgated by the U.S. Trade Representative, provides for the issuance of Certificates of Quota Eligibility by the Secretary of Agriculture, and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from warehouse for consumption at the low-tier duty rates unless such sugar is accompanied by a Certificate of Quota Eligibility. Certificates of Quota Eligibility are issued to foreign countries by the "Licensing Authority" who is the Team Leader, Import Quota Programs, Import Policies and Programs Division, Foreign Agricultural Service, United States Department of Agriculture, or his or her designee. The issuance of Certificates of Quota Eligibility is in such amounts and at such times as the Secretary determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

The information required to be collected on the Certificate of Quota Eligibility is used to monitor and control the imports of sugar. Proper completion of the certificate of quota eligibility is mandatory for those foreign governments that are eligible and elect to export raw sugar to the United States under the provisions of the tariff-rate quota.

Estimate of burden: The public reporting burden for these collections vary in direct relation to the number of Certificates of Quota Eligibility issued.

Respondents: Foreign governments.

Estimated number of respondents: 40 per annum.

Estimated number of responses per respondent: 15 per annum.

Estimated total annual burden of respondents: 100 hours.

Copies of this information collection can be obtained from Valerie Countiss, the agency Information Collection Coordinator, at (202) 720-6713.

Request for comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Stephen C. Hammond, Team Leader, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250-1021. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, February 12, 1997.

August Schumacher, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 97-3994 Filed 2-18-97; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 961121324-7019-03]

RIN 0693-ZA14

Announcement of Availability of Funding for Focused Program Competitions—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces the availability of funding for four Focused Program competitions under the Advanced Technology Program (ATP) for fiscal year 1997,

targeted on specific technology areas. The four Focused Program competitions being held are: (1) 97-04, Digital Data Storage; (2) 97-05, Technologies for the Integration of Manufacturing Applications (TIMA); (3) 97-06, Component-Based Software (CBS); and (4) 97-07, Tissue Engineering. This notice provides general information for these Focused Program competitions.

DATES: Proposal due dates and other specific instructions will be published in the Commerce Business Daily (CBD) at the time the competitions are announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, Administration Building (Bldg. 101), Room A407, Quince Orchard & Clopper Roads, Gaithersburg, MD 20899-0001.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at <http://www.atp.nist.gov>.

FOR FURTHER INFORMATION CONTACT:

Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free "hotline" number at 1-800-ATP-FUND or 1-800-287-3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address:

(b) Sending a facsimile (fax) to 301-926-9524 or 301-590-3053; or
(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 15 U.S.C. 278n), as modified by Pub. L. 102-245. The ATP implementing regulations are published at 15 CFR part 295. The Catalog of

Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed to assist United States industry/businesses pursue high-risk, enabling technologies with significant commercial/economic potential. The ATP provides multi-year funding to single companies and to industry-led joint ventures to pursue research and development (R&D) projects with high-payoff potential for the nation. The ATP accelerates enabling technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on projects characterized by high technical risk but commensurately high potential payoff to the nation. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a "cooperative agreement." Through the cooperative agreement, the ATP fosters a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plans a substantial role in these awards by providing technical assistance and monitoring the technical work and business progress.

Funding Availability

An estimated \$15 million in first year funding is available for each of the Focused Program Competitions 97-04, 97-05, and 97-06. An estimated \$12 million in first year funding is available for Focused Program Competition 97-07. The ATP reserves the right to utilize for any competition more or less funding than the amounts stated above. The actual number of proposals funded will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single companies can receive up to \$2 million of ATP funds for up to 3

years. Single companies do not have to provide matching funds, but they are reimbursed for direct costs only. Single companies are responsible for securing funding for all overhead/indirect costs.

(b) Joint ventures can receive a minority share of the total project costs for up to 5 years. Joint ventures must cost-share (matching funds) more than 50 percent of the total project costs (direct plus indirect costs) for each quarter that the ATP funds the project. Subcontractors funded under an ATP cooperative agreement may not contribute towards the matching-fund requirement.

Application Forms and Proposal Preparation Kit

A new November 1996 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. Note that the ATP mailed the Kit to all those individuals whose names are currently on the ATP mailing list. The Kit contains proposal cover sheets, other required forms, background material, and instructions for submission of proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

An applicant may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previously submitted proposal.

Other Requirements

(a) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) Past Performance. Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) Pre-award Activities. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Only written authorization from the NIST Grants Officer will obligate NIST to cover pre-award costs.

(d) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) Delinquent Federal Debts. No award of Federal funds shall be made to an applicant or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) Name Check Review. All for-profit and non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(g) Primary Applicant Certification. All primary applicants (including all joint venture participants) must submit a completed form CD-511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation is hereby provided:

(1) Nonprocurement Debarment and Suspension. Prospective participants, as defined at 15 CFR part 26, section 105 are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace. Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than \$100,000, and loans and loan guarantees for more than \$150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

(4) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(h) Lower Tier Certification. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF-LLL, "Disclosure of Lobbying Activities." Although the CD-512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF-LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program.

(k) American-Made Equipment and Products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB Control No. 0693-0009). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control No.

Dated: February 12, 1997.
 Elaine Buntin-Mines,
Director, Program Office.
 [FR Doc. 97-3996 Filed 2-18-97; 8:45 am]
BILLING CODE 3510-13-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Application for Designation as Contract Markets for Futures and Options on the New Zealand Dollar

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market for futures and options on the New Zealand Dollar. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before March 21, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418-5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME New Zealand Dollar futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418-5277. Facsimile number: (202) 418-5527. Electronic mail: ssherrod@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the

above address or by phone at (202) 418-5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on February 12, 1997.

Blake Imel,
Acting Director.

[FR Doc. 97-4003 Filed 2-18-97; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: National Security Agency.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act, the National Security Agency announces a proposal to collect information and seeks public comment 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) the accuracy of the Agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms and information technology. **DATES:** Consideration will be given to all comments received by April 21, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Director, National Security Agency, Attn: COTS Assistance and Evaluation Division (NCAIP Coordinator), 9800 Savage Road STE 6740, Fort George G. Meade, MD 20755-6740.

FOR FURTHER INFORMATION CONTACT:

To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the NSA Commercial Advice Information Program Coordinator at (410) 859-4458.

Title, Associated Form, and OMB Number: NSA Commercial Advice Information Program, Provider Response Form, Form Number TBD, OMB Number TBD.

Needs and Uses: The information collection requirement is necessary to obtain and record essential contact information and professional qualifications of individuals interested in providing technical advice to trusted computer product vendors or commercial evaluation facilities in support of the NSA Trusted Product Evaluation Program and the Trust Technology Assessment Program. The contact and technical capability information obtained from prospective providers will be published in one or more public venues (e.g., Federal Register, NSA computer systems for Internet World Wide Web and Dockmaster access, handbook or brochure) to provide maximum exposure to vendors and evaluation facilities interested in obtaining advice for commercial providers.

Affected Public: Any individual in the private sector interested in providing technical advice, on a fee-for-service or other paid or unpaid basis, to trusted product vendors or commercial evaluation facilities.

Annual Burden Hours: 25.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Security Agency (NSA) plans to implement a commercial advice information program in support of its Trusted Product Evaluation Program (TPEP). The objective of the NSA Commercial Advice Information Program (NCAIP) is to provide a timely source of information to vendors on how to obtain technical advice for

trusted product evaluations from commercial providers. NCAIP is a service that is intended to promote more timely and cost-effective trusted product evaluations by further decentralizing the advice process and offering commercial alternatives to vendors. A commercial advice capability exists today within the private sector and NCAIP intends to facilitate and promote this existing industry. A successful commercial advice information program will result in a cost savings for NSA and will give private industry greater ownership and involvement in trusted product evaluations.

NSA has been evaluating the security features and assurances of commercially produced computer products (e.g., operating systems, networks, network components, and database management systems) against the Trusted Computer System Evaluation Criteria (TCSEC) for over a decade as part of TPEP. TPEP was created to facilitate the widespread availability of commercial off-the-shelf trusted products for use by the U.S. Government, to advance the state of the art in information systems security, and to provide for the transfer of trust technology to private industry.

TPEP is unique in terms of industry and government cooperation. This cooperation places demands on both parties in terms of resource expenditures. Vendors use their own resources to develop trusted products, to establish required engineering processes, and to provide supporting evidence of product development. NSA commits government resources to review and assess product proposals, to provide technical advice during a pre-evaluation phase, to evaluate the resulting vendor products, and to staff a Technical Review Board (TRB) to maintain consistency and quality of evaluations. Upon successful evaluation, the product is awarded a trust rating and placed on a nationally recognized list of evaluated products, the Evaluated Products List (EPL). This partnership has resulted in the successful development of many trusted computer products over the past decade and in a significant transfer of trust technology to the private sector.

TPEP is currently organized into three phases: pre-evaluation, evaluation, and rating maintenance. The *pre-evaluation phase* consists of four principal activities that must be performed in preparation for an evaluation of a trusted product: proposal review, technical assessment, advice, and an intensive preliminary technical review. These activities are conducted to ensure that a product and its associated

documentation evidence are ready for evaluation. The *evaluation phase* consists of comprehensive system-level training for the evaluation team, an in-depth analysis of the system design, detailed security testing, presentations before a TRB, and the production of a Final Evaluation Report (FER). The *rating maintenance phase* is a continuation of the original evaluation that provides a mechanism for a vendor to maintain the rating of the product throughout its life-cycle.

The pre-evaluation phase begins with a review of a vendor's proposal to determine if the product has a high probability of meeting the appropriate TCSEC requirements, has the potential for broad market appeal, and is sufficiently mature in its design. As a result of the *proposal review*, a product may become a candidate for evaluation. A candidate product next goes through a *technical assessment*, where the vendor must show that the product design and the supporting documentation (i.e., evaluation evidence) are complete and presented in sufficient detail. The technical assessment can result in a recommendation to: (1) Schedule an *Intensive Preliminary Technical Review* (IPTR), (2) terminate the proposed effort due to technical deficiencies in the product, or (3) seek additional assistance in the form of advice.

The specific activity in the pre-evaluation phase, called *advice*, occurs when a small number of evaluators (the TPEP advice team) are assigned to the vendor until the vendor is ready for evaluation. The advice team usually includes at least one senior evaluator. In the event that NSA resources are unavailable or the proposed product does not meet the established criteria for TPEP advice (i.e., unique or new technology, high priority for DoD, or substantial market impact), the vendor will be asked to seek commercial alternatives. Some of the specific areas covered under the current advice-giving process are the TPEP process, the TCSEC requirements, product design, modeling, design and test documentation, ratings maintenance requirements, implementation questions relative to product design, and user documentation coverage.

Many activities are underway, nationally and internationally, to develop the next generation security evaluation criteria and associated evaluation methodologies (e.g., the Common Criteria and Common Evaluation Methodology). There are also ongoing efforts to develop and implement additional evaluation

programs to populate the EPL (e.g., the Trust Technology Assessment Program) that involve greater participation by the private sector. These changes are designed to bring greater efficiencies to the evaluation process by placing more responsibility on vendors to increase their state of readiness in preparation for entering a formal evaluation. There is also interest in exploring ways to reduce government expenditures for evaluations by identifying aspects of the current TPEP process that could be accomplished by the private sector on a fee-for-service basis.

The first activity in which the private sector has been participating is the rendering of technical advice to trusted product vendors. NSA has begun transferring the responsibility for providing pre-evaluation advice to private sector individuals resulting in the need for this commercial advice information program. Commercial advice providers can be used by vendors to participate in a variety of activities such as security analyses, modeling, assessment of a product's ability to meet evaluation criteria requirements, preparation for technical reviews, test development, team training, security mechanism development, and preparation of design and test documentation. Commercial advice providers can also provide information concerning criteria interpretations, ratings maintenance program actions, and the evaluation process, in general. Currently, NSA has no method for providing interested vendors with information about commercial advice providers.

Prospective commercial advice providers will be asked to submit both contact information and information regarding their technical capability to the NCAIP Coordinator. *Contact information* includes provider name, company affiliation (optional), address, telephone number, facsimile number, and electronic mail address. A comment section will provide the opportunity to list any additional information deemed important with respect to *technical capability*. This information may include provider education, training, previous experience and specialized expertise.

Dated: February 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-4032 Filed 2-18-97; 8:45 am]

BILLING CODE 5000-04-M

Meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the first meeting of the Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet, and describes the functions of the Committee. The meeting will be open to the public. Notice of this meeting is required under the federal Advisory Committee Act, (Pub. L. 92-463). Notice of this meeting is less than fifteen days prior to the meeting due to an administrative delay.

DATES: February 27-28, 1997.

ADDRESSES: Room 1235 NSF Board Room, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: The Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet was established on February 11, 1997, by Executive Order 13035 and will expire two years from that date. The purpose of the Committee is to provide the National Science and Technology Council, through the Director of the Office of Science and Technology Policy, with advice and information on high performance computing and communications. The Committee members are a well-balanced group of distinguished individuals appointed by the president from various non-Federal sectors.

PROPOSED SCHEDULE AND AGENDA: The Advisory Committee will meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:00 p.m. on February 27, 1997, and from approximately 8:30 a.m. to noon on February 28, 1997. This first meeting will focus discussions on necessary historical perspectives; Federal computing, information, and communications R&D investments including the Next Generation Internet Initiative; identifying Government roles in High End Computing and Computation; and formulating approaches for partnering with academia and industry.

FOR FURTHER INFORMATION: Please call the National Coordination Office for Computing, Information, and Communications at (703) 306-4722. Public seating for this meeting is

limited, and is available on a first-come, first-served basis.

Dated: February 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-4033 Filed 2-18-97; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement; Evolved Expendable Launch Vehicle Program

The Department of the Air Force, through Space and Missile Systems Center (SMC/MV), is considering development and deployment of an Evolved Expendable Launch Vehicle (EELV) to meet the U.S. Government's requirements for unmanned space launches. The EELV Program Office at Los Angeles Air Force Base (AFB), California, is managing program activities and intends to study the environmental issues associated with the EELV program. To this end, the Air Force Center for Environmental Excellence (AFCEE) will prepare an environmental impact statement (EIS) for use in the decision-making process.

The EELV would be an unmanned, expendable space launch vehicle evolved from existing systems capable of launching Department of Defense (DOD), National Aeronautics and Space Administration (NASA), other government, and civil satellites, including payloads up to 45,000 pounds. It is intended to meet the requirements of the National Mission Model, both medium and heavy lift, at a lower cost than the present expendable systems. EELV would be DOD's sole source of expendable medium and heavy spacelift transportation to orbit through 2020. EELV would replace current Titan II, Titan IV, Atlas II, and Delta II launch vehicles.

EELV launch activities would occur at Cape Canaveral Air Station (AS), Florida, and Vandenberg AFB, California, from existing space launch complexes that would be modified to meet program requirements.

The EELV program decision to be made is whether EELV should proceed into the Engineering and Manufacturing Development Phase on through Production and Launch Operations. The EIS will examine continuing use of existing launch systems and facilities as alternatives to the continued development of EELV and its associated facilities.

Scoping will be conducted to identify environmental concerns and issues that need to be addressed in the EIS. Two public scoping meetings will be held as part of the process (one each in Cape Canaveral, Florida and Lompoc, California) to determine the environmental issues and concerns that should be addressed. The schedule for the scoping meetings is as follows:

1. Radisson Resort at the Port, 8701 Astronaut Blvd, Cape Canaveral, Florida, March 11, 1997, 7:00-10:00 p.m.

2. Lompoc City Council Chambers, 100 Civic Center Plaza, Lompoc, California, March 13, 1997, 7:00-10:00 p.m.

Public input and comments are solicited concerning the environmental aspects of the proposed program. To assure the Air Force will have sufficient time to fully consider public inputs on issues, written comments should be mailed to ensure receipt no later than April 11, 1997.

Comments concerning the proposed project or the EIS should be addressed to: Jonathan D. Farthing, Chief, Environmental Analysis Division, HQ AFCEE/ECA, 3207 North Road, Brooks Air Force Base, Texas 78235-5363, (210) 536-3668.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97-4061 Filed 2-18-97; 8:45 am]

BILLING CODE 3910-01-P

AFIT Subcommittee of the Air University Board of Visitors; Notice of Meeting

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on March 2-4, 1997, with the first business session beginning at 8:30 a.m. in the Commandant's Conference Room, Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the Board an opportunity to review Air Force Institute of Technology's educational programs and to present to the Commandant a report of their findings and recommendations concerning these programs. There are five (5) seats at the meeting available for the public.

For further information on this meeting, contact Ms. Beverly Houtz in the Directorate of Plans and Operations, Air Force Institute of Technology, (513) 255-5760.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 97-3983 Filed 2-18-97; 8:45 am]

BILLING CODE 3910-01-P

Air University Board of Visitors; Notice of Meeting

The Air University Board of Visitors will hold an open meeting on April 13–16, 1997, with the first business session beginning at 8:00 a.m. in the Air University Conference Room at Headquarters Air University, Maxwell Air Force Base, Alabama.

The purpose of the meeting is to give the Board an opportunity to review Air University educational programs and to present to the Commander a report of their findings and recommendations concerning these programs. There are five (5) seats at the meeting available for the public.

For further information on this meeting, contact Dr. Dorothy Reed, Chief of Academic Affairs, Air University Headquarters, Maxwell Air Force Base, Montgomery, Alabama 36112–6335, telephone (334) 953–5159. Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.
[FR Doc. 97–3984 Filed 2–18–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy**Notice of Availability of Invention of Licensing; Government Owned Invention**

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Requests for copies of the patent application cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the patent application serial number.

Patent Application Serial No. 07/253,106: CAGED POLYNITRAMINE COMPOUND; filed September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: January 22, 1997

D. E. Koenig, Jr.,
LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–4060 Filed 2–18–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Director, Information Resources Management 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 April 21, 1997.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

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, Information Resources Management 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 12, 1997.

Gloria Parker,
Director, Information Resources Management Group.

Office of Vocational and Adult Education

Type of Review: New.

Title: School-to-Work Progress Measures.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden: Responses: 1,025; Burden Hours: 6,800.

Abstract: The Progress Measures Survey focuses on four elements of Title IV, Section 402 of the School-to-Work Opportunities Act: student participation in school-to-work; institutional and employer participation; leveraging of funds; and outcomes. The participation measures are designed to track elaboration of local partnership School-to-Work (STW) systems; the leveraging measures are intended to capture efforts to develop sources of funding that will enable STW to be self-sustaining after sunset of the legislation; and the outcomes measures are indicators of achievement of the Act's primary goals. These data, collected on a regular basis, will provide important evidence of state and local partnership commitments to the legislative mandate.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52; Burden Hours: 4,130.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in

educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children, and adult correctional institutions and (2) the October caseload of N or D children in local institutions.

[FR Doc. 97-3970 Filed 2-18-97; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed changes and extensions to Forms EIA-851, "Domestic Uranium Mining Production Report," and EIA-858, "Uranium Industry Annual Survey," for the collection of 1997 data. The Form EIA-254, "Annual Report on Status of Reactor Construction," will be discontinued.

DATES: Written comments must be submitted within 60 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Charles Johnson, Energy Information Administration, EI-531, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (phone number (202) 426-1178; e-mail address CJOHNSON@EIA.DOE.GOV, and FAX number (202) 426-1280).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Charles Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates,

assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The Energy Information Administration, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, Title 44, U.S.C. Chapter 35).

The Form EIA-254 (discontinued with this notice) collects data on nuclear power plants planned or under construction, including plant ownership, design capacity, status, cost, and construction schedules and milestone dates.

The Form EIA-851 collects data on uranium production at conventional mills and nonconventional plants (byproduct recovery and in-situ leach plants).

The Form EIA-858 collects data on uranium raw materials activities (Schedule A) and uranium marketing (Schedule B).

Data collected on these forms provide a comprehensive statistical characterization of the domestic nuclear industry in these areas: uranium reserves, potential future requirements for uranium production and enrichment facilities, uranium concentrate production, status of industry's annual activities, and information about industry plans and commitments.

Published data from these surveys are used by Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. Published data appear in the EIA publications, "Nuclear Power Generation and Fuel Cycle Report," "Uranium Industry Annual," and the "Annual Energy Review."

II. Current Actions

The EIA-254 will be discontinued for 1997.

There are no changes to the data elements collected on the Form EIA-851; however, a 3-year extension of the approved OMB expiration date (12/31/97) is requested.

The only change to the Form EIA-858 (Schedule A and Schedule B) is the elimination of the certification block on the cover sheet. A request to extend the approval expiration date (12/31/97) for 3 years will also be submitted to OMB.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted in accordance with the due date specified in the instructions?

C. Public reporting burden for these collections are estimated to average: Form EIA-851, 3 hours; and Form EIA-858, 25 hours. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of automated collection techniques

or other forms of information technology.

D. What are the estimated (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual dollar amount of operation, maintenance, and purchase of service costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing the information. Estimates should not include purchases of equipment or services made as part of customary and usual business practices, or the cost of any burden hours for completing the form. EIA estimates that there are no additional costs other than those that the respondent incurs in keeping the information for its own uses.

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Can you use data at the levels of detail indicated on the Form EIA-851 and EIA-858?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

Issued in Washington, DC, February 12, 1997.

Lynda T. Carlson,

*Director, Office of Statistical Standards,
Energy Information Administration.*

[FR Doc. 97-4017 Filed 2-18-97; 8:45 am]

BILLING CODE 6450-01-P

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Energy Information Administration (EIA) has submitted the "Residential Energy Consumption Survey" (RECS) (Forms EIA-457A/G) to the Office of Management and Budget (OMB) for clearance under the provisions of the Paperwork Reduction

Act (44 U.S.C. chapter 35). Notice of this submission was published in the Federal Register on January 21, 1997 (62 FR 3031). This notice supplements the earlier notice. Unless additional funding is made available, it will be necessary to delete the Low Income Home Energy Assistance Program (LIHEAP) questions (questions K-1 through K-3). The target sample will also be reduced from 5,800 cases to 5,000. If necessary, this decrease in the target sample will reduce the annual burden by 290 hours from 2,005 to 1,715.

DATES: Comments must be filed on or before February 20, 1997. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jay Casselberry, Office of Statistical Standards, (EI-70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 426-1116, FAX (202) 426-1081, or e-mail at jcasselb@eia.doe.gov.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13).

Issued in Washington, DC February 12, 1997.

Lynda T. Carlson,

*Director, Office of Statistical Standards,
Energy Information Administration.*

[FR Doc. 97-4016 Filed 2-18-97; 8:45 am]

BILLING CODE 6450-01-P

Office of Energy Research

Energy Research Financial Assistance Program Notice 97-10; Microbial Genome Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S.

Department of Energy (DOE), hereby announces its interest in receiving applications for grants in support of the Microbial Genome Program (MGP). The MGP focus is on developing and using high-throughput microbial genome sequencing that will provide functional genomic sequence and mapping information on microorganisms: with environmental or energy relevance; of phylogenetic significance; and of potential commercial importance and application. Bioinformatics tools relating to complete genomic sequences are also of importance to the MGP.

DATES: Preapplications referencing Program Notice 97-10 should be received by March 24, 1997. Formal applications in response to this notice should be received by 4:30 p.m., E.D.T., June 9, 1997, to be accepted for merit review and funding in early FY 1998.

ADDRESSES: Preapplications referencing Program Notice 97-10 should be sent to Dr. Marvin E. Frazier, Office of Health and Environmental Research, ER-72, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290; e-mail is acceptable for submitting preapplications using the following address:

lana.ahalt@oer.doe.gov. Formal applications referencing Program Notice 97-10 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER-64, 19901 Germantown Road, Germantown, MD 20874-1290, ATTN: Program Notice 97-10. This address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin E. Frazier, ER-72, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290, telephone: (301) 903-5468, e-mail: lana.ahalt@oer.doe.gov.

SUPPLEMENTARY INFORMATION: Molecular biological research on industrially important microorganisms and on microorganisms that live in extreme environments (including the deep subsurface, geothermal environments, hypersaline environments, frozen environments, and toxic waste sites) is a developing area of great scientific promise that will impact many DOE missions, other federal agency missions, and U.S. industry. The Microbial Genome Program supports key DOE business areas by providing microbial

DNA sequence information that will further the understanding and application of microbial biology relating to energy production, chemical and materials production, and environmental cleanup. The exploration of microbial genomic sequence diversity is a natural outgrowth of past and current Biological and Environmental Research (BER) Programs, including chromosome mapping and DNA sequencing from the Human Genome Program, structural biology studies utilizing BER-supported facilities and synchrotrons located at DOE laboratories, and molecular microbiological research supported by BER environmental programs. The MGP benefits directly from capabilities at DOE national laboratories, DOE and National Institutes of Health Human Genome Centers, the DOE and NIH Genome Data Base (GDB), and university capabilities, including the DOE-sponsored Subsurface Microbial Culture Collection and the DOE Genome Sequence Data Base (GSDB). The MGP represents a considerable interdisciplinary effort and will contribute to and draw from a wide variety of public and private programs.

Applications are being sought in three complementary areas: genomic sequencing, functional analysis, and bioinformatics. Each application must clearly state which area is being addressed; if an applicant wishes to address more than one area, the application must clearly describe the expected advantages of an integrated approach.

1. Genomic Sequencing.

The DOE intends to continue its support of one or two laboratories that will completely sequence carefully selected microbial genomes. Applicants must demonstrate that they can apply the most recent, high-throughput technology cost-effectively to the production of sequence data and show that they can adequately and efficiently accumulate, store and disseminate those data for future interpretation and application. A commitment to and a plan for making the sequence data publicly available by deposition into an accessible sequence database (GenBank and GSDB) within three months of data acquisition and annotation must be included in the Project Description. Preference will be given to those applicants that demonstrate well developed plans for selecting candidates for DNA sequencing. Candidate microorganisms may include, but are not limited to, bacteria and archaea that mediate or catalyze metabolic events of energy or environmental importance.

Strict pathogens or parasites will not be considered. Applicants are encouraged to create process- and cost-effective partnerships that will maximize sequence data production and analysis, data dissemination, and progress towards understanding basic biological mechanisms that can further the development of biotechnology. It is anticipated that one or two major awards will be made to conduct microbial genome sequencing for a total of \$3 to 4 million in FY 1998.

Many microorganisms that are closely related by means of phylogenetic measures (e.g., 16S rRNA comparisons) display dramatic differences in phenotypic characteristics. Such differences can be chromosomal in origin, or they can be due to extrachromosomal genetic elements. DOE is interested in technologies that could exploit the completed sequence of one microorganism to efficiently determine the sequence of a related taxon, without resequencing the entire genome of the related organism *de novo*. New technologies up to the proof-of-principle stage are eligible for support, and it is estimated that between two and four awards for a total of \$500,000 to \$1 million could be available in FY 1998.

2. Functional Analysis

It is presently difficult, and in many instances impossible, to predict biological function from genomic sequence data. Better methods are needed to identify open reading frames and predict their function. This is especially true for environmental isolates and for environmental microorganisms that cannot yet be cultured. Accordingly, applications are requested that will address these and related needs in the area of predicting biological function. It is estimated that between two and four awards for a total of \$1 to \$2 million could be available for this area in FY 1998.

3. Bioinformatics

It is estimated that by June, 1997, completed genomic sequences of five or six archaea and bacteria (*Mycoplasma genitalium*, *Methanococcus jannaschii*, *Methanobacterium thermoautotrophicum*, *Archaeoglobus fulgidus*, *Pyrococcus furiosus*, and *Aquifex* sp. strain VF5) will be publicly available, as a direct result of DOE Microbial Genome Program funding. In addition, completed sequences for *Haemophilus influenzae*, *Saccharomyces cerevisiae*, and *Synechocystis* sp. strain PCC6803 are also now publicly available, and by June, 1997, *Escherichia coli*, *Helicobacter pylori*, and *Borrelia*

burgdorferii genomic sequences should also be publicly available (all funded by other sources). This unprecedented explosion of genetic information, along with the anticipated increase in other genomic sequence data that will occur over the next year, has underscored the need for better approaches and tools for comparing and analyzing this rapidly increasing volume of data. Accordingly, applications are requested that will propose ways in which data from all databases can be accessed, analyzed, compared, updated, verified, and annotated. It is anticipated that between two and four awards for a total of \$1 to \$2 million could be available for this area in FY 1998.

Potential applicants are strongly encouraged to submit a brief preapplication that consists of two to three pages of narrative describing the research objectives and method of accomplishment. Preapplications will be reviewed relative to the scope and research needs of the BER Microbial Genome Program, as outlined in the summary paragraph and in the **SUPPLEMENTARY INFORMATION**. Principal investigator telephone number, FAX number, and e-mail address are required as part of the preapplication. A response to each preapplication discussing the potential programmatic relevance of a formal application will be communicated to the Principal Investigator within 14 to 21 days of receipt.

It is anticipated that approximately \$7 million will be available for all MGP awards, five to ten awards are anticipated, contingent on availability of appropriated funds in FY 1998. Multiple year funding is expected, also contingent on availability of funds and progress of the research. Previous awards have ranged from \$200,000 to \$2 million per year with terms of one to three years.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project;
2. Appropriateness of the Proposed Method or Approach;
3. Competency of Applicant's personnel and Adequacy of Proposed Resources;
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's

programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the Federal Register. The Project Description must be 30 pages or less, exclusive of attachments. It must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitae consistent with NIH guidelines.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Energy Research Financial Assistance Program 10 CFR Part 605. Access to ER's Financial Assistance Application Guide is possible via the World Wide Web at: <http://www.er.doe.gov/production/grants/grants.html>.

Other useful web sites include:

MGP Home Page—http://www.er.doe.gov/production/oher/EPR/mig_top.html

GenBank Home Page—<http://www.ncbi.nlm.nih.gov/>

GSDB Home Page—<http://www.ncgr.org/gsdb/>

Human Genome Home Page—<http://www.ornl.gov/hgmis>

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on February 12, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97-4015 Filed 2-18-97; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. CP97-239-000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

February 12, 1997.

Take notice that on February 10, 1997, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP97-239-000, pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate under the provisions of Section 7(c) of the NGA an existing interconnection in Harper County, Oklahoma, that has been constructed pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) authorized in blanket certificate issued in Docket Nos. CP82-480-000 and CP88-532-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR seeks authorization to operate a previously constructed interconnection (KansOk Interconnection) with the pipeline system of Kansok Partnership (KansOk), constructed in October, 1994. The facilities consist of a hot tap and tie-in assembly located on ANR's existing 20-inch pipeline. The facilities were originally constructed at a cost of approximately \$29,000, for which ANR was fully reimbursed by KansOk. ANR delivers natural gas at this interconnection "on behalf of" KansOk for the account of MarGasCo Partnership. The KansOk Interconnection was reported in ANR's 1994 Annual Report of NGPA Section 311 construction in Docket No. CP95-370-000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an

application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3974 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-207-001]

Distrigas of Massachusetts Corporation; Notice of Compliance Filing

February 12, 1997.

Take notice that on February 10, 1997, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing in accordance with Order No. 582 compliance tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, as specified in the letter order issued in this proceeding on January 24, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3980 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-240-000]

East Tennessee Natural Gas Company; Notice of Request Under Blanket Authorization

February 12, 1997.

Take notice that on February 10, 1997, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97-240-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point to provide interruptible natural gas transportation service to the Virginia Gas Distribution Company (Virginia Gas), a local distribution company, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point on its system at approximate Mile Post 3404-1+0.0 in Russell County, Virginia for deliveries to Virginia Gas of up to 1,000 Dekatherms per day of natural gas on an interruptible basis. East Tennessee states it will install, own and maintain a 2-inch hot tap and electronic measurement equipment. East Tennessee states that Virginia Gas will install, own, operate and maintain approximately 40 feet of two-inch interconnect piping and install, own and maintain the meter facilities. East Tennessee also states that Virginia Gas will provide a meter site adjacent to East Tennessee's existing pipeline right-of-way and will reimburse East Tennessee for the cost of the project which is estimated to be \$28,800.

East Tennessee states that the total quantities to be delivered to Virginia Gas after the delivery point is constructed will not exceed previously authorized quantities. East Tennessee also states, that the installation of the proposed delivery point is not prohibited by East Tennessee's tariff, and that East Tennessee has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3975 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-236-000]

**National Fuel Gas Supply Corporation;
Notice of Application**

February 12, 1997.

Take notice that on February 6, 1997, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97-236-000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon certain underground natural gas storage facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

National proposes to abandon an observation well, designated as Well 1557, because it is no longer reliable as a pressure indicator for the field. National further proposes to abandon well line S-1557, a gathering line attached to Well 1557 which serves no other purpose. National estimates the cost of performing the plugging and abandonment of the well and the gathering line to be \$20,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 5, 1997, file with the Federal Energy Regulatory Commission (888 First Street, NE., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the

Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3973 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP96-16-003 and RP93-36-017]

**Natural Gas Pipeline Company of
America; Notice of Compliance Filing**

February 12, 1997.

Take notice that on February 7, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective February 1, 1997.

Natural stated that the purpose of the filing is to comply with the Commission's letter order issued January 29, 1997 in Docket Nos. RP96-16-002 and RP93-36-016 (Letter Order), which approved Natural's "Stipulation and Agreement" filed in these same dockets on September 30, 1996 (Settlement). Natural stated that the tariff sheets submitted reflect the revisions necessary to implement the provisions of the Settlement.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective February 1, 1997, as requiring by the Settlement and pursuant to the Letter Order.

Natural stated the copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP96-16-002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3979 Filed 2-18-97; 8:45 am]

BILLING CODE 6617 01-M

[Docket No. RP97-248-001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 12, 1997.

Take notice that on February 7, 1997, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 1, 1997:

Fifth Revised Volume No. 1

12 Revised Sheet No. 59

14 Revised Sheet No. 60

On January 31, 1997, Northern filed in Docket No. RP97-248-000 to recover costs relating to take-or-pay, pricing or other contract provisions, and buyout, buydown or reformation costs pursuant to the Commission's Order No. 528. Tariff Sheet Nos. 59 and 60 were inadvertently excluded from the filing. The reason for this filing is to file Sheet Nos. 59 and 60 which had been mistakenly omitted from the January 31, 1997 filing in Docket No. RP97-248-000.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3981 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-60-010]

Overthrust Pipeline Company; Notice of Report of Refunds

February 12, 1997.

Take notice that on February 4, 1997, Overthrust Pipeline Company (Overthrust) tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1996.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, "Order Approving Settlement with Modifications" in Docket Nos. RP85-60-000 and -002. Overthrust explains that Article V of the settlement as modified, requires Overthrust to file an annual report 60-days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before February 20, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97-3977 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP97-221-000]

Texas Gas Transmission Company; Notice of Petition to Amend

February 12, 1997.

Take notice that on January 31, 1997, Texas Gas Transmission Company, (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP97-221-000, a petition to amend the certificate of public convenience and necessity issued on June 2, 1980 in Docket No. CP80-196, pursuant to Section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to construct and operate facilities at the Midland No. 3 Compressor Station located at the Midland Gas Storage Field in Muhlenberg County, Kentucky, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Texas Gas seeks to increase the horsepower at its Midland No. 3 Compressor Station by uprating the currently installed Cooper Bessemer GMVH-10M engine. Specifically, Texas Gas would increase the maximum horsepower output from 2,250 horsepower to 2,610 horsepower at 40 degrees Fahrenheit and below. Texas Gas avers that the additional horsepower will aid Texas Gas in meeting peak day requirements but will not increase the maximum daily withdrawal capability at the Midland Gas Storage field.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 5, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3972 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MG97-11-000]**Texas Gas Transmission Corporation; Notice of Filing**

February 12, 1997.

Take notice that on February 3, 1997, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct to incorporate changes to its list of marketing affiliates. Texas Gas has deleted five companies previously listed as marketing affiliates, whose operations have either been merged with another marketing affiliate or whose business involving the taking of title to gas has been transferred to another marketing affiliate.

Texas Gas states that it has served copies of its revised standards of conduct upon each person 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 February 27, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97-3976 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP97-249-000]**Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff**

February 12, 1997.

Take notice that on February 7, 1997, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing to be effective April 1, 1997.

Viking states that the revised tariff sheets reflect conforming changes to Viking's tariff to permit Viking to charge negotiated rates for its transportation services in accordance with the Commission's Alternatives to Traditional Cost-of-Service Ratemaking

for Natural Gas Pipelines, Statement of Policy, 74 FERC ¶ 61,076 (Docket No. RM95-6-000) (January 31, 1996).

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3982 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-136-005]**Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff**

February 12, 1997.

Take notice that on February 7, 1997, Williams Natural Gas Company (WNG) tendered for filing its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised sheet No. 6 and Nineteenth Revised Sheet No. 6A. The proposed effective date of these tariff sheets is March 1, 1997.

On November 27, 1997, WNG filed a Stipulation and Agreement (Agreement) in Docket No. RP95-136, which, among other things, partially resolves WNG's cost of service, overall throughput level and mix of throughput for Docket No. RP95-136 rate period commencing August 1, 1995. Article IV of the Agreement provides that, in order to implement the settlement rates as early as practical, WNG will file to request Commission authority to place the settlement rates in effect and to make refunds down to the settlement rates as of the first day of the first month following at least 30 days after the Agreement is certified to the Commission (i.e. to be effective March 1, 1997). WNG also agreed to include as part of such filing a request to make effective as of the same date "ITS

revenue credits" as provided in Article V, Section B of the Agreement.

Consistent with, and subject to, Articles IV and VII of the Agreement, the instant filing proposes to implement, subject to certain conditions, the settlement rates effective March 1, 1997.

WNG states that a copy of its filing was served on all participants listed on the Commission's official service list in this docket, as well as on all jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 97-3978 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-153-000]**Southern Natural Gas Company; Notice of Environmental Site Visit for the Proposed North Alabama Pipeline Project**

February 12, 1997.

On February 19, 1997, the Office of Pipeline Regulation (OPR) staff will conduct a helicopter overflight of the North Alabama Pipeline Project facilities and alternatives for the proposed facilities.

One seat in the helicopter will be made available for those who have intervened in opposition to the project. OPR invites a designated representative of those intervenors to accompany time. To do so, correspondence should be filed with the Secretary of the Commission identifying the name, address, and telephone number of the designated representative no later than 1:00 pm on Friday, February 14, 1997. A copy of the filing should be FAXed

to the OPR Director's office at (202) 208-0193.

Warren C. Edmunds,
Acting Director, Office of Pipeline Regulation.
[FR Doc. 97-4034 Filed 2-18-97; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP97-222-000, et al.]

Columbia Gulf Transmission Company, et al.; Natural Gas Certificate Filings

February 10, 1996.

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Company

[Docket No. CP97-222-000]

Take notice that on January 31, 1997, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, STE 125, P.O. Box 683, Houston, Texas 77001-0683, filed in Docket No. CP97-222-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new point of delivery in Wilson County, Tennessee, under Columbia Gulf's blanket certificate issued in Docket No. CP83-496-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct and operate a new point of delivery for providing firm transportation service to City of Lebanon. Columbia Gulf states that the estimated quantities of natural gas to be delivered is 4,000 Dth/day and 500,000 Dth/annually and will be utilized for the City of Lebanon's system supply. Columbia Gulf estimates construction costs to be \$239,000.

Columbia Gulf states that this new proposal is not prohibited by its existing tariff, that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its existing peak day obligations and annual deliveries to its other customers will not be impacted, and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company

[Docket No. CP97-228-000]

Take notice that on February 4, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street,

Omaha, Nebraska 68124, filed in Docket No. CP97-228-000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act and Sections 157.7 and 157.18 of the Commission's Regulations to abandon as non-jurisdictional facilities, by sale to American Gathering L.P. (American Gathering), certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern seeks Commission approval to abandon approximately 16 miles of pipeline ranging in diameter from 6 to 20 inches, including appurtenant facilities, extending from a point in Section 145, Block B2, NO RR Survey, Gray County, Texas to the suction side of the McConnell Compressor Station in Section 44, Block 4, I&GN RR Survey, Carson County, Texas.

According to Northern, these facilities were originally constructed for the purpose of attaching gas supplies which Northern had purchased for its merchant sales obligation. Northern states that these facilities are no longer necessary for Northern to transport gas for its merchant function due to the industry changes mandated by Order No. 636.

Northern will sell the facilities, which have a book value of \$2,814, to American Gathering for \$150,000, and will record a credit to Account 4211 of \$147,186.

Comment date: March 3, 1997, in accordance with Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP97-230-000]

Take notice that on February 4, 1997, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301 filed, in Docket No. CP97-230-000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon .45 miles of 2-inch pipeline, known as Line H-21754, located in Adkin District, McDowell County, West Virginia by sale to Classic Oil & Gas Resources (Classic), and that the line be operated as a non-jurisdictional gathering line by Classic, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that Line H-21754 consists of 2-inch gathering line that connects production owned by CNG, also being sold to Classic, to CNG's gathering system. CNG describes Line H-21754 as typical of gathering with a pressure of approximately 195 psig, and says that the line is currently listed as

gathering in CNG's Revised Volume 1A of its FERC Gas Tariff. CNG states there are no other producers who have production located on this line other than Classic. CNG explains that CNG and Classic have agreed that CNG will sell Line H-21754 to Classic for \$10.00. Further, CNG says that since the pipeline does not comprise an operating unit, no gain or loss is recognized on the transaction. CNG states no transportation contracts will be terminated by this sale to Classic. CNG says the delivery point for the gas entering CNG's system will move downstream from the current delivery point.

Comment date: March 3, 1997, in accordance with Standard Paragraph F at the end of this notice.

4. South Georgia Natural Gas Company

[Docket No. CP97-233-000]

Take notice that on February 6, 1997, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP97-233-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a second delivery point, including measurement and appurtenant facilities, for service to its existing customer, Florida Power Corporation (Florida Power), under South Georgia's blanket certificate issued in Docket No. CP82-548-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

South Georgia proposes to construct and operate a meter station consisting of one 4-inch turbine meter and other appurtenant facilities in order to provide transportation service to Florida Power at a new delivery point (Florida Power #2) so that Florida Power, in turn, may utilize additional requirements of natural gas at its Suwannee Generating Plant. The application states that South Georgia proposes to locate the Florida Power #2 delivery point at or near Mile Post 100.324 on its 10-inch Main Line in Suwannee County, Florida. South Georgia states that Florida Power will own the measurement facilities and South Georgia will construct and operate them at Florida Power's expense. South Georgia states that it will own the interconnecting facilities and SCADA equipment. South Georgia estimates the cost of the construction and installation of the facilities to be

approximately \$317,150. South Georgia also states that Florida Power will construct, own and operate as part of its generating plant facilities approximately 1000 feet of 8-inch-diameter pipeline extending from the outlet of the meter station to Florida Power's combustion turbine building.

South Georgia estimates the annual volumes to be delivered to the proposed Florida Power #2 delivery point to be 350,000 Mcf, which is equivalent to an estimated daily average of 959 Mcf. South Georgia states that the maximum delivery volumes are expected to be 9,720 Mcf per day. South Georgia further states that it will provide the transportation service to the proposed Florida Power #2 delivery point under its Rate Schedule IT, and that installation of the proposed facilities will have no adverse effect on its ability to provide its firm requirements.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

5. Koch Gateway Pipeline Company

[Docket No. CP97-234-000]

Take notice that on February 6, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP97-234-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate delivery point facilities in St. Charles Parish, Louisiana to implement an interruptible transportation service of up to 4,000 million Btu per day under Rate Schedule ITS for Occidental Chemical Corporation (Oxy), under the blanket certificate issued in Docket No. CP82-430-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed facilities consist of a 4-inch tap, 4-inch meter station and 670 feet of 4-inch pipeline, with the tap located on its lateral line 300-22. Koch Gateway states that the proposed facilities would allow it to provide Oxy's peak day and average day requirements of 4,000 million Btu and 2,500 million Btu, respectively. Koch Gateway estimates a facility cost of \$130,000, which would be reimbursed by Oxy.

Koch Gateway states that the interruptible transportation service to be rendered through the delivery point facilities would be performed using existing capacity on its system and would have no effect on its peak day

and annual deliveries. It is also stated that its tariff does not prohibit the proposed installation of facilities.

Comment date: March 27, 1997, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97-4035 Filed 2-18-97; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30394A; FRL-5578-4]

Ciba-Geigy Corporation; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Able Biological Insecticide and Technical CGA-269941, containing active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Michael Mendelsohn, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308-8715; e-mail: mendelsohn.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under "Rules and Regulations."

EPA issued a notice, published in the Federal Register of November 1, 1995 (60 FR 55574; FRL-4979-7), which announced that Ciba-Geigy Corporation, Ciba Crop Protection, Greensboro, NC 27419, had submitted applications to register the products Able Biological Insecticide and Technical CGA-269941 (File Symbols 100-TTA and 100-TTL), containing the active ingredient *Bacillus thuringiensis* var. *kurstaki* strain M-200 at 6.0 and 12.0 percent respectively, an active ingredient not included in any previously registered products.

The applications were approved on November 15, 1996, for an end-use and a technical product as listed below:

1. Able Biological Insecticide (EPA Reg. No. 100-776) for control of lepidopteran insect of tree fruits, terrestrial small fruits and vegetables, tree nuts, alfalfa, herbs, cranberries, corn, cotton, and soybeans.

2. Technical CGA-269941 (EPA Reg. No. 100-775) for formulating into end-use products for control of lepidopterus insect pests of tree fruits, terrestrial small fruits and vegetables, tree nuts, herbs, spices, cranberries, alfalfa, corn, peanuts, cotton, and soybeans.

The Agency has considered all required data on risks associated with the proposed use of *Bacillus thuringiensis* var. *kurstaki* strain M-200, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of *Bacillus thuringiensis* var. *kurstaki* strain M-200 when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* var. *kurstaki* strain M-200.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Regulatory Action Leader. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305-5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of

Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 5, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97-3929 Filed 2-18-97; 8:45 am]

BILLING CODE 6560-50-F

[PF-703; FRL-5585-6]

Ciba-Geigy Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of tolerances for residues of difenoconazole in or on raw agricultural commodities of barley. This notice includes a summary of the petition that was prepared by the petitioner, Ciba-Geigy Corporation.

DATES: Comments, identified by the docket control number [PF-703], must be received on or before March 21, 1997.

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

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF-703]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic

submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Cynthia Giles-Parker, Product Manager (PM 22), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 229, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-5540, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP-6F4748) from Ciba-Geigy Corporation, 410 Swing Rd., Greensboro, NC 27401, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide, difenoconazole, in or on the raw agricultural commodities barely forage, hay, and straw at 0.05 parts per million (ppm) and barley grain at 0.01 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Ciba-Geigy Corporation (Ciba-Geigy) included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Ciba-Geigy. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is

including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

The analytical method AG-575B (MRID 42806504) was used to determine residues of difenoconazole in or on barley matrices. This method is proposed as the regulatory enforcement method for barley. It is a revised version of AG-575A that incorporates specificity data and methodology for megabore column gas chromatography. The procedures in AG-575A remain unaltered in the revised method, AG-575B. Procedural recoveries on barley substrates, fortified prior to extraction at levels ranging from 0.01 ppm to 5.0 ppm, ranged from 70% to 125% using AG-575B.

One-year freezer storage stability was demonstrated in lettuce, soybeans, and wheat forage. A 2-year stability study including wheat forage, grain, and straw is now in progress.

A. Chemical Uses

Difenoconazole is the active ingredient in dividend® 3FS, a fungicide that offers broad-spectrum control of several seed, soil borne, and foliar pathogens of wheat. In the current petition, dividend is being developed as a seed treatment for barley and triticale. It is highly active at rates of 0.5 to 1.0 fl. oz. of 3FS formulation/100 lb of seed (0.0125 to 0.025 lb active ingredient (ai)/100 lb seed). In barley, dividend controls barley stripe, general seed rots, fusarium seed scab, and covered smut. Dividend also partially controls take-all, common root rot, fusarium root rot, and fusarium crown rot. Dividend controls general seed rots of triticale.

B. Difenoconazole Safety

1. Ciba-Geigy has submitted over 20 toxicity studies in support of tolerances for difenoconazole. Difenoconazole has a low order of acute toxicity, minimal irritation potential, and no sensitization potential. There was no evidence of genotoxicity, and it is not fetotoxic, embryolethal, or teratogenic. It is not a reproductive toxin. The main target organ of toxicity was the liver in the species tested. There was an increase in liver tumors only in mice, and only, according to the EPA's Carcinogenicity Peer Review Committee (CPRC), at doses considered excessively high for carcinogenicity testing. EPA has concluded that for the purpose of risk characterization, the margin of exposure (MOE) approach (threshold model) should be used for quantification of human risk. MOEs are extremely high

for the U.S. population and all population subgroups for both chronic effects and acute toxicity.

2. The following mammalian toxicity studies were conducted and submitted in support of tolerances for difenoconazole. No observed effect levels (NOELs) are consistent with those published in the Federal Register of August 24, 1994 (59 FR 43490, FRL-4906-2).

i. A rat acute oral study with an LD₅₀ of 1,453 milligram/kilogram (mg/kg).

ii. A rabbit acute dermal study with an LD₅₀ of >2,010 mg/kg.

iii. A rat acute inhalation study with an LC₅₀ of >3.285 milligram/liter (mg/L).

iv. A primary eye irritation study in the rabbit which showed slight irritation.

v. A primary dermal irritation study in the rabbit which showed slight irritation.

vi. A dermal sensitization study in the guinea pig which showed no irritation.

vii. A 13-week rat feeding study identified liver as a target organ and had a NOEL of 20 ppm.

viii. A 13-week mouse feeding study identified liver as a target organ and had a NOEL of 20 ppm.

ix. A 26-week dog feeding study identified liver and eye as target organs and had a NOEL of 100 ppm.

x. A 21-day dermal study in rabbits had a NOEL of 10 mg/mg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

xi. A 24-month feeding study in rats had a NOEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response.

3. An 18-month mouse feeding study had an overall NOEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOEL was 300 ppm.

4. A 12-month feeding study in dogs had a NOEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

5. An oral teratology study in rats had a maternal NOEL of 16 mg/kg/day based on excess salivation, decreased body weight gain, and food consumption. The developmental NOEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification.

6. An oral teratology study in rabbits had a maternal NOEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion.

7. The developmental NOEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including slight increase in post-implantation loss and resorptions and decreased fetal weight.

8. A two-generation reproduction study in rats had a parental and reproductive NOEL of 25 ppm based on significantly reduced female body weight gain, and reductions in male pup weights at 21 days.

9. There was no evidence of the induction of point mutations in an Ames test.

10. There was no evidence of mutagenic effects in a mouse lymphomatest.

11. There was no evidence of mutagenic effects in a nucleus anomaly test with Chinese hamsters.

12. There was no evidence of induction of DNA damage in a rat hepatocyte DNA repair test.

13. There was no evidence of induction of DNA damage in a human fibroblast DNA repair test.

C. Threshold Effects

1. *Chronic effects.* Based on the data from chronic studies in rats, mice, and dogs, the reference dose (RfD) for difenoconazole is 0.01 mg/kg/day published in the Federal Register of August 24, 1994 (59 FR 43490). The RfD for difenoconazole is based on the chronic study in rats with a threshold NOEL of 1 mg/kg/day and an uncertainty factor of 100.

2. *Acute toxicity.* i. EPA has concluded that the dietary acute MOE for developmental toxicity was 25,000 for high exposure in the females 13+ subgroup. The agency is generally not concerned unless the MOE is below 100 for substances whose acute NOEL is based on animal studies.

ii. Ciba-Geigy concurs, and has also considered that since the percentage of the RfD utilized in the chronic exposure analysis for all population subgroups is less than 10, it is highly unlikely that any acute dietary exposure scenario would utilize a significant percentage of the RfD.

iii. Since MOEs of 100 or more are considered satisfactory, there is no concern for acute dietary exposure for the U.S. population, for various population subgroups, or for either gender.

D. Non-Threshold Effects

1. The Health Effects Division, CPRC evaluated the weight of the evidence on difenoconazole with reference to its carcinogenic potential. The CPRC concluded that difenoconazole should be classified a Group C carcinogen, and

for the purpose of risk characterization the MOE approach should be used for quantification of human risk.

2. In the 18-month study with CD-1 mice, there was a statistically significant increase in hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes, but only at dose levels which were considered excessively high for carcinogenicity testing. This is considered very weak evidence of carcinogenic potential. Additionally, there was no evidence of carcinogenicity in either sex of CD rat after 24 months, and there was no evidence of genotoxicity. Therefore, a threshold model should be used for estimating risk. The CPMC determined that a NOEL of 4.7 mg/kg/day, based on endpoints related to hepatic tumor development, should be used for calculating MOEs. The calculated margin of exposure, using worst case assumptions, was 9,958 for the U.S. population.

E. Aggregate Exposure

1. When the potential dietary exposure to difenoconazole is calculated, the theoretical maximum residue concentration (TMRC) of 0.00041 mg/kg/day utilizes 4% of the RfD for the overall U.S. population. For the most exposed population subgroups, children and non-nursing infants, the TMRC is 0.000946 mg/kg/day, utilizing 9% of the RfD published in the Federal Register of August 24, 1994 (59 FR 43490).

2. Ciba-Geigy has conducted another exposure analysis using additional crops and similar conservative assumptions. In this analysis, oats, barley, and bananas (pending import tolerance) were included in addition to wheat. Tolerances or proposed tolerances were 0.1 ppm each for wheat, oats, and barley, and 0.2 ppm for bananas. Tolerances were 0.01 ppm for milk and 0.05 ppm for all other commodities: beef, goat, horse, rabbit, sheep, pork, turkey, eggs, chicken, and other poultry. Very conservative assumptions were used to estimate residues (i.e. 100% of all wheat, oats, barley, and imported bananas used for human consumption or forage was treated and all raw agricultural commodities contained tolerance level residues). These estimates result in a extreme overestimate of human dietary exposure. Calculated TMRC values from these assumptions utilize 4.7% of the RfD for the U.S. population and 12.51% of the RfD for non-nursing infants.

3. Other potential sources of exposure of the general population to residues of pesticides are drinking water and non-occupational sources. Difenoconazole is

currently used as a seed treatment and residues are, therefore, incorporated into the soil at very low rates (0.0125 to 0.025 lb ai/100 lb of seed). The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil absorption/desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and it would not be expected to reach aquatic environments. For these reasons and because of the low-use rate, exposures to residues in ground water are not anticipated.

4. Non-occupational exposure for difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

5. Ciba-Geigy has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Ciba-Geigy has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Ciba-Geigy has no information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Ciba-Geigy is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

F. Determination of Safety for U.S. Population

1. Using the very conservative exposure assumptions described in Unit I.E. of this document, and based on the completeness of the toxicity data base for difenoconazole, Ciba-Geigy calculates that aggregate exposure to difenoconazole utilizes <5% of the RfD for the U.S. population based on chronic toxicity endpoints (NOEL = 1 mg/kg/day). When using the carcinogenic NOEL of 4.7 mg/kg/day and the MOE approach recommended by the CPMC, approximately 1% of the RfD is utilized.

2. If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the highest exposed population subgroup. EPA generally has no concern for exposures below 100% of the RfD. Therefore, Ciba-Geigy concludes that there is reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime.

G. Determination of Safety for Infants and Children

Developmental toxicity and two-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels which did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the two-generation reproduction study. Therefore, Ciba-Geigy concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole.

H. Estrogenic Effects

1. Developmental toxicity studies in rats and rabbits and a two-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats, and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime.

2. Difenoconazole has not been found in raw agricultural commodities at the limit of quantitation (LOQ). Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential to interfere with the endocrine system, and there is no risk of endocrine disruption in humans.

I. Chemical Residues

1. The nature of the residue is adequately understood in plants and animals. The metabolism of difenoconazole has been studied in wheat, tomatoes, potatoes, and grapes. The metabolic pathway was the same in these four separate and distinct crops. There are no Codex maximum residue levels established for residues of difenoconazole in barley. Ciba-Geigy has submitted a practical analytical method for detecting and measuring levels of difenoconazole in or on food with a LOQ that allows monitoring of food with residues at or above the levels

set in the proposed tolerances. EPA will provide information on this method to the Food and Drug Administration (FDA). The method is available to anyone who is interested in pesticide residue enforcement from EPA's Field Operations Division, Office of Pesticide Programs.

2. Nine-barley trials were conducted in eight states. Fifty-four one-time treated grain, hay, and straw samples (fed commodities) were analyzed. In addition, eighteen one-time treated forage samples were analyzed. Residues of difenoconazole in barley grown from seed treated with difenoconazole were below the LOQ in forage, hay, and straw (<0.05 ppm), and grain (<0.01 ppm). The feeding of difenoconazole-treated barley products to beef or dairy cattle will not require an increase in existing beef tissue or milk tolerances. Similarly, the feeding of difenoconazole-treated barley grain to poultry will not require increasing existing established poultry tissue and egg tolerances.

J. Environmental Fate

Since the Agency classifies seed treatment uses as "indoor," the only environmental fate data requirement is hydrolysis. Difenoconazole is hydrolytically stable in solution at 25 °C at pH 5, 7, or 9.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF-703].

A record has been established for this notice under docket control number [PF-703] including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

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

The official record for this notice, as well as the public version, as described

above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this notice.

List of Subjects

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

Dated: February 4, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97-3930 Filed 2-18-97; 8:45 am]

BILLING CODE 6560-50-F

[PF-699; FRL-5585-5]

Zeneca Ag Products; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of lambda-cyhalothrin and its epimer in or on rice. The names for lambda-cyhalothrin and its epimer are as follows: lambda-cyhalothrin, a 1:1 mixture of (S)-alpha-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-alpha-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. Epimer of lambda-cyhalothrin, a 1:1 mixture of (S)-alpha-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-alpha-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate. The summary was prepared by the petitioner, Zeneca Ag Products.

DATES: Comments, identified by the docket control number [PF-699], must be received on or before March 21, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and

Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Crystal Mall #2, Room 1132, 1921 Jefferson Davis Highway, Arlington VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF-699]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, George LaRocca, Product Manager, (PM 13), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-6100, e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP-6F4769) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish tolerances for residues of the insecticide lambda-cyhalothrin in or on the raw agricultural commodities rice

grain at 1.0 parts per million (ppm), rice straw at 1.75 ppm, and in or on the processed commodity rice hulls at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. EPA has determined the proposed analytical method is gas liquid chromatography with an electron capture detector. As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Zeneca Ag Products (Zeneca) included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Zeneca; EPA as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA may have made edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of lambda-cyhalothrin has been studied in cotton, soybean, cabbage, and wheat plants. The studies show that the metabolism generally follows that of other pyrethroid insecticides. The ester linkage is cleaved to form cyclopropanecarboxylic acids and the corresponding phenoxybenzyl alcohol. Overall the studies show that unchanged lambda-cyhalothrin is the principal constituent of the residue on edible portions of these crops.

2. *Analytical method.* An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Sixteen field trials were carried out on rice during 1995 in the United States. The trials were conducted in the states of Arkansas, Louisiana, Missouri, Mississippi, Texas, and California. These states account for 100% of the production acres of rice in the United States. The number and geographical distribution of the trials agrees with the recommendation given in the "EPA Residue Chemistry Guidance" (1994). In these trials, the maximum combined residues of lambda-cyhalothrin and epimer were 0.88 ppm in or on rice

grain and 1.62 ppm in or on rice straw. In addition, a single field trial was conducted during 1995 in the States of Mississippi and Arkansas for the purpose of determining if lambda-cyhalothrin residues in rice, concentrate in or on processed rice fractions. Data from these trials demonstrated that residues of lambda-cyhalothrin may concentrate up to 6.1 times in or on rice hulls but do not concentrate in rice bran or polished rice.

B. Toxicological Profile

The following toxicity studies have been conducted to support the request for a regulation for residues of lambda-cyhalothrin in or on rice.

1. *Acute toxicity.* Acute toxicity studies with the technical grade of the active ingredient lambda-cyhalothrin: oral LD₅₀ in the rat of 79 milligram/kilogram (mg/kg) (males) and 56 mg/kg (females), dermal LD₅₀ in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation, and primary dermal irritation study showed no irritation.

2. *Genotoxicity.* The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity.* i. A three-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal no observed effect level (NOEL) and lowest observed effect level (LOEL) for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOEL and LOEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

ii. A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOEL and LOEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

iii. A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOEL and LOEL are established at 10 and 30 mg/kg/day, respectively, based on decreased body

weight gain. The developmental NOEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity.* i. A 90-day feeding study in rats fed doses of 0, 10, 50, and 250 ppm with a NOEL of 50 ppm and a LOEL of 250 ppm based on body weight gain reduction.

ii. A 21-day study in rabbits exposed dermally to doses of 0, 10, 100, and 1,000 mg/kg/day, 6 hours/day, 5 days/week with a systemic NOEL >1,000 mg/kg. There were no clinical signs of systemic toxicity at any dose level tested.

5. *Chronic toxicity.* i. A 12-month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, and 3.5 mg/kg/day with a NOEL of 0.1 mg/kg/day. The LOEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

ii. A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOEL was established at 50 ppm and LOEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

iii. A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOEL was established at 100 ppm and systemic LOEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). Zeneca concludes that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism.* Metabolism studies in rats demonstrated that distribution patterns and excretion rates in multiple oral dose studies are similar to single-dose studies. There is an accumulation of unchanged compound in fat upon chronic administration with slow elimination. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, Zeneca concludes that there is no need to discuss metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. For the purposes of assessing the potential dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues and percent crop treated. For all existing and pending tolerances the anticipated residue contribution (ARC) is estimated at 0.0002682 mg/kg/body weight (bwt)/day.

ii. *Drinking water*. Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into groundwater. Other data show that lambda-cyhalothrin is virtually insoluble in water and extremely lipophilic. As a result, Zeneca concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Zeneca concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure*. Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. Zeneca has no data upon which to estimate exposure from these uses. However, given the extremely low vapor pressure of lambda-cyhalothrin (1.5×10^{-9} millimeters (mm) of mercury (Hg)) and the low use rates, it is anticipated that inhalation and dermal exposure from these uses Zeneca concludes will be insignificant.

D. Cumulative Effects

At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Thus, Zeneca concludes that for purposes of this tolerance it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

E. Safety Determination

The acceptable reference dose (RfD) based on a NOEL of 0.1 mg/kg/bwt/day from the chronic dog study and a safety factor of 100 is 0.001 mg/kg/bwt/day. A chronic dietary exposure/risk assessment has been performed for lambda-cyhalothrin using the above RfD. Available information on anticipated residues and percent crop treated was incorporated into the analysis to estimate the ARC. The ARC is generally considered a more realistic

estimate than an estimate based on tolerance level residues.

1. *U.S. population*. The ARC from established tolerances and the current and pending actions are estimated to be 0.0002682 mg/kg/bwt/day and utilize 26.82% of the RfD for the U.S. population.

2. *Infants and children*. The ARC for children, aged 1 to 6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 57% and 65% of the RfD, respectively. Generally speaking, the Agency has no cause for concern if ARC for all published and proposed tolerances is less than the RfD.

F. International Tolerances

There are no Codex maximum residue levels (MRL) established for residues of lambda-cyhalothrin in or on rice.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF-699].

A record has been established for this notice under docket control number [PF-699] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this notice.

List of Subjects

Environmental protection,
Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 6, 1997.

Peter Caulkins,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97-3932 Filed 2-18-97; 8:45 am]

BILLING CODE 6560-50-F

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: March 6-7, 1997. The White House Conference Center, Truman Room, Third Floor, 726 Jackson Place, N.W., Washington, D.C. 20500.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The PCAST will meet in an open session during the afternoon of Thursday, March 6, 1997, at approximately 1:30 p.m. The meeting will focus on concluding the Educational Technologies report, the FY98 budget briefings, and the kickoff of the 1997 PCAST Studies. This session will end at approximately 5:30 p.m.

The Committee will reconvene in open session on Friday, March 7, 1997, at approximately 9:30 a.m., for a general discussion among Committee members and other Executive Office staff about current activities of the Office of Science and Technology Policy (OSTP) and the National Science and Technology Council (NSTC).

FOR FURTHER INFORMATION: For information regarding time, place, and agenda, please call Jeanie Hall at (202) 456-6100 prior to 3:00 p.m. on Wednesday, March 5, 1997. Other questions may be directed to Angela Phillips Diaz, Executive Secretary for PCAST, or Andrea Razzaghi at (202) 456-6100. Please note that public seating for this meeting is limited, and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was

established on November 23, 1993, by Executive Order 12882, as amended, and continued through September 30, 1997, by Executive Order 12974. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by John H. Gibbons, Assistant to the President for Science and Technology, and by John Young, former President and CEO of Hewlett-Packard Company.

Barbara Ann Ferguson,
Assistant Director for Budget and
Administration, Office of Science and
Technology Policy.

Dated: February 13, 1997.

[FR Doc. 97-4087 Filed 2-13-97; 4:58 pm]

BILLING CODE 3170-01-P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 20, 1997, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883-4025, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business Regulation

—General Financing Agreement [12 CFR Parts 614 and 627] (Proposed)

Dated: February 13, 1997.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97-4191 Filed 2-14-97; 2:04 pm]

BILLING CODE 6705-01-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to OMB for Emergency Review and Approval

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, (202) 395-3561 or via internet at fain—t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet to dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060-0343.

Title: Section 25.140 - Qualifications of Satellite Space Station Licensees.

Form No.: N/A.

Type of Review: Provision to existing collection.

Respondents: Not-for-profit institutions; Business or other for-profit; Small businesses and organizations.

Number of Respondents: 25.

Estimated time per response: 100 hours.

Total Annual Burden: 2500 hours.

Estimated Cost per Respondent: Based on the assumption that applicants will hire outside counsel at an approximate cost of \$150 per hour, it is estimated that the cost per submission will be \$150,000.00.

Needs and Uses The collections of information contained in Part 25 are used by Commission staff in carrying out its duties as set forth in Section 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 308 and 309, to determine the technical, legal and other qualifications of an applicant to operate a satellite space station. The one-step financial showings, including amendments to pending applications filed under this policy, will be used by the Commission to determine whether applicants are qualified to construct, launch and operate satellite space station facilities in order to provide timely service to the public. The information collected is used to determine whether the public interest, convenience and necessity will be served, in accordance with Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. 309.

OMB Approval Number: 3060-0108.

Title: Emergency Alert System Activation Report.

Form No.: Form 201.

Type of Review: Revision to existing collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 13,000 with an estimated 1,300 annual responses.

Estimated time per response: 2 minutes.

Total Annual Burden: 42 hours.

Estimated Cost per Respondent: 0 costs.

Needs and Uses: The information is needed to maintain accurate records and documentation of broadcast stations and cable systems in compliance with FCC rules, local Emergency Alert System (EAS) equipment failures, and to enhance and encourage participation in the national, state and local EAS.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-4030 Filed 2-18-97; 8:45 am]

BILLING CODE 6712-01-F

Sunshine Act Meeting: FCC To Hold Open Commission Meeting Thursday, February 20, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 20, 1997, which is scheduled to commence at 9:30 am in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Wireless Telecommunications—

Title: Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding. Summary: The Commission will consider clarifications and procedural changes to the general auction rules based on its experience conducting auctions. It will also propose changes to the general competitive bidding rules that are intended to simplify and eliminate unnecessary rules wherever possible.

2—Wireless Telecommunications—

Title: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services (PR Docket No. 92-235). Summary: The Commission will consider the consolidation of the private land mobile radio services below 800 MHz.

3—Wireless Telecommunications—

Title: Amendment of the Commission's Rules Regarding Multiple Address Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PR Docket No. 93-253). Summary: The Commission will consider proposing new service, licensing, and competitive bidding rules for spectrum allocated to Multiple Address Systems in the Fixed Microwave Services.

4—Wireless Telecommunications—

Title: Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (WT Docket No. 96-18) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253). Summary: The Commission will consider action concerning geographic area licensing of common carrier paging and 929 MHz private

carrier paging, and competitive bidding procedures for auctioning geographic area paging licenses.

5—Wireless Telecommunications—

Title: Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89-552, RM-8506); Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93-252) and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 220-222 MHz (PP Docket No. 93-253). Summary: The Commission will consider action concerning the future operation and licensing of the 220-222 MHz band.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418-0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857-3800 or fax (202) 857-3805 and 857-3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its-inc@ix.netcom.com. Their Internet address is <http://www.itsi.com>.

This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993-3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966-2211 or fax (202) 966-1770; and from Conference Call USA (available only outside the Washington, D.C. metropolitan area), telephone 1-800-962-0044. Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418-0460, or TTY (202) 418-1398; fax numbers (202) 418-2809 or (202) 418-7286.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 97-4160 Filed 2-14-97; 12:12 pm]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

East West North South Forwarding, Inc.,
2315 N.W. 107 Avenue, 1M57, Box
25, Miami, FL 33172. Officer: Ashok
Kitchloo, President

Central Export Services, 1020 15th
Street, #24, Modesto, CA 95354,
Michael W. Birch, Sole Proprietor

Dated: February 13, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97-4012 Filed 2-18-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 24, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 14, 1997.
 Jennifer J. Johnson,
Deputy Secretary of the Board.
 [FR Doc. 97-4229 Filed 2-14-97; 3:45 pm]
 BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Delegations of Authority; Public Law 80-566, 62 Stat. 281, 40 U.S.C. 486(d) and 40 U.S.C. 318a and 318b

Notice is hereby given that pursuant to the authority granted to me by the Acting Administrator of General Services, signed on December 9, 1996, I hereby delegate to you the following authority.

1. *Delegation:* In accordance with section 205 (d) and (e) of the Federal Property and Administrative Service Act of 1949, as amended, the Administrator of General Services hereby delegates and authorizes successive redelegation of the authority identified herein.

2. *Authorities Delegated:* Authorities relating to the protection of Federal property vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80-566, 62 Stat. 281, 40 U.S.C. 486 (d), 40 USC 318a and 318b and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 are hereby delegated to the Director, National Institutes of Health (NIH) for the protection of the property and persons at NIH, National Cancer Institute's (NCI) facilities in Frederick Cancer Research and Development Center ("NCI parcel") located in Frederick, MD.

3. *Responsibilities and Limitations:*

A. The NIH Director or designated officials shall take steps to issue regulations and to authorize successive redelegations of authority to protect persons and property identified in this delegation. This may be accomplished through the establishment of rules and regulations governing conduct on the affected property and execution of agreements with other Federal, State, or Local authorities.

B. This delegated authority is limited to the properties identified in paragraph 2.

4. *Disputes:* Except as otherwise provided in this delegation, any dispute concerning a matter of act arising under this delegation which is not disposed of by mutual agreement shall be decided by the Administrator of General Services. The decision of the

Administrator on such matters shall be final.

5. *Termination and Modifications:* Any of all authority delegated may be terminated by the Administrator of General Services or the Attorney General upon 120 days notice, if it is determined that such action is in the best interest of the Government.

6. *Evaluation:* Effectiveness of the delegation of protection activities will be evaluated on a continuing basis. This evaluation may include random on-site inspections and by meeting with HHS officials. HHS will be given at least 30 days to submit comments for incorporation in the final evaluation report. HHS is encouraged to conduct periodic assessments of its protection program and provide an information copy to the General Services Administration.

7. *Termination:* Any or all authority delegated may be terminated by the Administrator of General Services or the Secretary of HHS upon 120 days notice if determined that such action is in the best interest of the Government.

8. *Term of Delegations:* The delegation is effective immediately.

Dated: January 28, 1997.
 Donna E. Shalala,
Secretary of the Department of Health and Human Services.
 [FR Doc. 97-4037 Filed 2-18-97; 8:45 am]
 BILLING CODE 4140-01-M

Office of the Secretary

Delegation of Authority; Patents and Inventions

Notice is hereby given that I have delegated to Heads of the Public Health Service Operating Divisions all authorities to administer and make decisions regarding the invention and patent program of their respective Operating Divisions and the authority to make determinations of rights in inventions and patents in which the Department has an interest, except as specified below.

Restrictions

1. The Secretary retains authority to submit reports to Congress.

2. This delegation excludes those authorities under the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986 and the National Technology Transfer and Advancement Act of 1995, which are governed by a separate delegation.

Redelegation

All authorities other than the authority under 35 U.S.C. 203 (March-in Rights) may be redelegated.

Prior Delegations

The prior delegations of authority, to the PHS Agency Heads (retitled Heads of Operating Divisions), derived from authority given to the Assistant Secretary for Health (ASH) in 45 CFR Part 6. Those regulations were recently rescinded because they were obsolete (61 FR 54743 (October 22, 1996)). In addition, the delegation of authority from the ASH to the then-PHS Agency Heads dated July 15, 1988, which was amended by a memorandum dated July 24, 1991 from the ASH to the Director, National Institutes of Health is hereby superseded. Prior redelegations by the PHS Agency Heads under that authority shall remain in effect unless modified by PHS Operating Division Heads.

Ratification

All actions taken by the Heads of PHS Operating Divisions or their subordinates from October 22, 1996 to the effective date of this delegation that would have been authorized under 45 CFR 6.2 and delegations thereunder are hereby ratified.

Effective Date

Effective upon signature.

Dated: January 31, 1997.
 Donna E. Shalala,
Secretary of the Department of Health and Human Services.
 [FR Doc. 97-4038 Filed 2-18-97; 8:45 am]
 BILLING CODE 4150-04-M

Centers for Disease Control and Prevention

[INFO-97-04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) 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, call the CDC Reports Clearance Officer on (404) 639-7090.

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 for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The Tri-State Mining District: Lead Exposure and Immunotoxic Effects Study—New—The proposed study

evaluates associations between immune system dysfunction/damage and exposure to lead among children in the Tri-State Mining District. This district encompasses several contaminated areas including three Superfund sites: The Oronogo-Duenweg Mining Belt site in Jasper County, Missouri; the Cherokee County Site in Kansas; and the Tar Creek, Ottawa County Site in Oklahoma.

The proposed study consists of two repeated in-person interviews and biological testing for blood lead and immune function among participants of the ongoing lead screening programs in the Tri-State Mining district. Approximately 50 children identified as having blood lead <10 micrograms per decilitre and 50 children with blood lead levels <5 micrograms per decilitre will constitute the study and

comparison groups respectively. Blood specimens will be obtained to measure lead, complete blood count, EP, ZPP, antibody titers, and the CDC/ATSDR recommended immune panel. A second blood drawn a month later will examine intra-personal immune tests stability and will help evaluate the relationship between immune results and recent illness. Parents will be interviewed using a children's health questionnaire that solicits information on demographics, the medical history of each child and the occurrences of recent illness. Statistical analyses will compare health outcome measures (symptoms, illness, change in immune parameters) to blood lead levels. Other than their time, there will be no cost to the respondents. The length of clearance requested is 3 years.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/re-sponse (in hrs)	Total burden (in hrs.)
Child Health Questionnaire	100	2	0.5	100
Total				100

Dated: February 12, 1997.
Wilma G. Johnson,
Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).
[FR Doc. 97-4006 Filed 2-18-97; 8:45 am]
BILLING CODE 4163-18-P

[30DAY-30]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on February 11, 1997.

Proposed Project

The Second Longitudinal Study of Aging (LSOA II)—(0920-0219)—New—The Second Longitudinal Study of Aging is a second generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. It will replicate portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. LSOA II is also designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

Approximately 10,000 persons aged 70 and over were interviewed for the 1994 National Health Interview Survey's second Supplement on Aging (SOA II) between October of 1994 and March of 1996. LSOA II will reinterview the SOA II sample three times: In 1997, 1999, and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

LSOA II will contain modules on scientifically important and policy-relevant domains, including: (1) Assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total annual burden is 8,099.

Respondents	Number of respondents	Number of responses/Respondent	Avg. burden/response (in hrs.)
Sample Adult	10,037	1	.806

Dated: February 12, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-4007 Filed 2-18-97; 8:45 am]

BILLING CODE 4163-18-P

[30DAY-29]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on February 11, 1997.

Proposed Project

1. Feasibility Study of a State and Local Area Integrated Telephone Survey—New—This is a request to conduct a feasibility study in five States of an integrated survey to collect broad State-based health and health-related data using two existing and ongoing

data collection systems, the National Immunization Survey (NIS) and the National Health Interview Survey (NHIS) (0920-0214). The purpose of this project is to demonstrate the potential for using random-digit-dialing (RDD) methods to sample households for Computer Assisted Telephone Interviews (CATI) to produce quick turnaround State-level estimates on issues such as health status, access to care, health insurance coverage, and utilization of services for monitoring and tracking changes in the health care system. As health care markets respond to new incentives and States gain increasing responsibility for administering health and welfare programs, State level data are being recognized as increasingly important to the public health and health policy community. While considerable population-based data are available at the national level, there is a variable amount at the State level.

The proposed strategy of building on two established systems provides several advantages. It is less costly than establishing a new system; the proposed questions have been thoroughly tested; and implementation can occur rapidly. In the NIS, interviews are conducted on a random sample of telephone households to produce vaccination coverage estimates for children 19 to 35 months of age for all 50 states, the District of Columbia, and 27 urban areas. The NIS CATI system offers a mechanism for rapid data collection and for expansion to establish a more broad

based system to monitor and track changes in health status, the health care system, and welfare reform at the State level. In addition, since the design for the NIS requires screening 20 households to identify a single household with an age eligible child, a potential cost effective opportunity exists to make use of the large probability sample of telephone numbers for other emerging health care issues. The NHIS is a continuous general purpose national health survey in which face-to-face interviews are conducted to measure health characteristics of the U.S. civilian noninstitutionalized population. Use of an abbreviated set of questions from the NHIS for the proposed integrated telephone survey will allow for standardization of the questionnaire across States and will allow comparisons with national data. In addition, the quality of the estimates developed from the telephone survey can be improved with adjustments for nontelephone households using information from the NHIS on telephone and nontelephone households.

The long term strategy is to build an integrated and coordinated data collection mechanism that can be both standardized for State and national comparisons and customized for State-specific needs. The total annual burden is 17,000 reflecting an average of the two years assuming coverage of 5 areas in 1997 and 78 areas in 1998.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
1997				
Noninstitutionalized household population in 5 States	5,500	1	0.33	1,833
1998				
Noninstitutionalized household population in 50 States or substate areas	55,000	1	0.33	18,333
Noninstitutionalized household population in 28 substate areas	31,000	1	0.33	10,333

Dated: February 10, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-4008 Filed 2-18-97; 8:45 am]

BILLING CODE 4163-18-P

[Announcement Number 723]

Grants for Intimate Partner Violence Prevention Research Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces applications are being accepted for Intimate Partner Violence Prevention Research Grants for fiscal year (FY) 1997. The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Violent and Abusive Behavior. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under Sections 301, 391, 392, 393 and 394 of the Public Health Service Act, as amended (42 U.S.C. 241, 280b, 280b-1, 280b-1a, and 280b-3). Program regulations are set forth in Title 42 CFR, Part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments, State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Smoke-Free Workplace

CDC 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, child care, health care, and early childhood development services are provided to children.

Availability of Funds

Approximately \$750,000 is expected to be available to fund 3-4 injury research grants in the area of intimate partner violence. The specific program priorities for these funding opportunities are outlined with examples in this announcement under the section, "Programmatic Priorities." It is expected that the awards will begin on or about September 1, 1997, and will be made for a 12-month budget period within a project period of up to three years. Funding may not exceed \$250,000 per year (including both direct and indirect costs). Grant applications that request more than the \$250,000 per year cap will be returned to the investigator as non-responsive. Funding availability may vary and is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Use of Funds: Prohibition on Use of CDC Funds for Certain Gun Control Activities. The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997 specifies that: None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1997 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

A. Background

Intimate partner violence is a major public health problem. Although men are at much greater risk of fatal injury due to interpersonal violence, women are at much higher risk of nonfatal injuries due to intimate partner violence. National surveys estimate that approximately 2 million women each year are battered by an intimate partner, and crime data from the Federal Bureau of Investigation (FBI) record about 1,500 murders of women by husbands or boyfriends each year. The Bureau of Justice Statistics reports that women sustained about 3.8 million assaults and 500,000 rapes a year in 1992 and 1993: More than 75 percent of these violent acts were committed by an intimate, a husband, ex-husband, boyfriend, or ex-boyfriend. Studies estimate that between 13 and 25 percent of all U.S. women will experience rape in their lifetimes.

These numbers are thought to be underestimates of the actual number of American women assaulted by intimate male partners.

The total extent and severity of violence-related nonfatal injuries is unknown, but an increasing portion of the nation's health care and rehabilitation systems' resources are devoted to attending to victims of violence. Intimate partner violence (including rape, physical battering, and psychological abuse) are associated with a host of both short-and long-term problems, including physical injury and illness, psychological symptoms, and death. The consequences extend far beyond the individual female victims, affecting their children, families, friends, and society as well.

Opportunities to understand and prevent intimate partner violence-related injuries and reduce their effects are available. Maximizing these opportunities for prevention requires a broad approach, incorporating many disciplines that heretofore have not been an integral part of public health efforts. Many of these opportunities and research priorities are discussed in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000. Additional background information can be found in the following suggested readings: Understanding Violence Against Women, Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach. (To receive information on these reports see the

section Where To Obtain Additional Information);

B. Definitions

1. *Injury*: Injury is generally defined as physical damage to an individual that occurs over a short period of time as a result of acute exposure to one of the forms of physical energy in the environment or to chemical agents or the acute lack of oxygen.

2. *Intimate Partner Violence* is defined as threatened or actual use of physical or sexual violence or psychological/emotional abuse perpetrated on a woman by a partner or ex-partner that either results or has the potential to result in injury or death. Types of behavior that fit within this definition are commonly referred to as domestic violence, sexual assault, spouse abuse, date rape, partner abuse, women battering, and acquaintance rape. Public health approaches violence as a health issue and consequently, uses injuries, both fatal and nonfatal, psychological and physical, to quantify the impact of violence. Our primary interest is in preventing violence against adolescent and adult women that occurs in the context of intimate relationships.

3. *Intimate partner violence prevention research projects* are defined as research designed to:

- a. Elucidate the chain of causation—the etiology and mechanisms—of injuries related to intimate partner violence; or
- b. Yield results directly applicable to identifying interventions to prevent injuries and deaths due to intimate partner violence; or
- c. Evaluate the effect of policies, programs, or interventions for intimate partner violence on morbidity, mortality, disability, and costs.

Purpose

The purposes of this program are to:

- A. Build the scientific base for the prevention of injuries and deaths due to intimate partner violence as delineated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000.
- B. Identify effective strategies to prevent intimate partner violence-related injuries.
- C. Expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of intimate partner violence-related injuries.
- D. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminology and criminal justice, and

behavioral and social sciences, to undertake research to prevent and control injuries from intimate partner violence.

E. Encourage the training of pre-doctoral minority investigators to work in the area of violence research.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. Ability to carry out intimate partner violence prevention research as previously defined under Background and Definitions, (B.3.a-c).

E. Overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, "Programmatic Priorities."

Note: Grant funds will not be made available to support the provision of direct care services.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Priorities

Applicants must propose research that (1) enhances understanding of social, economic, and environmental factors that may be associated with intimate partner violence, and (2) determines the effectiveness of prevention/intervention programs for perpetrators of intimate partner violence.

Enhance understanding of societal level factors within a specific targeted community that may be associated with intimate partner violence and the costs of such violence.

- Conduct research to determine which societal level factors (e.g., crowding, socioeconomic status (SES), norms about intimate partner violence, levels of general violence, number of liquor stores in the community, etc.) contribute to perpetration of intimate partner violence.
- Conduct studies to determine direct and indirect costs of intimate partner

violence (such as days absent from work or school, quality of life, numbers of visits to mental health and medical care providers, number of miscarriages, mental and physical disabilities, impact on child witnesses, etc.)

Determine the effectiveness of prevention/intervention programs for (potential or actual) perpetrators of intimate partner violence.

- Develop and evaluate innovative or alternative approaches or settings for identifying and providing interventions and/or deterrents for perpetrators of intimate partner violence.
- Identify the components of effective batterer interventions.
- Evaluate the effectiveness of programs targeting children and young adolescents that teach and foster healthy interpersonal relationships as primary prevention of future perpetration of intimate partner violence.

Reporting Requirements

An original and two copies of the financial status and progress reports are due 90 days after the end of each budget period. A brief (2–3 page) summary of the study findings and a final financial status report is due 90 days after the end of the project period.

Application Content

Applications for injury control research grants should include:

A. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability and economic losses. This focus should be based on recommendations in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and Healthy People 2000 and should seek creative approaches that will contribute to a national program for injury control.

B. Specific, measurable, and time-framed objectives.

C. A detailed plan describing the methods, by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

D. A description of the role and responsibilities of the project's principal investigator.

E. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

F. A description of the role, duties, and responsibilities of the project's pre-

doctoral minority investigator(s) (a minimum of 15% of each pre-doctoral minority investigator's time should be reflected in the project's budget).

G. A description of those activities related to, but not proposed to be supported by the grant.

H. A description of the involvement of other entities, (e.g., proposed study sites), that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

I. A detailed first year budget for the project with future annual projections, if relevant.

J. Applicants must identify in a cover letter one of the topics previously outlined under the heading Programmatic Priorities upon which their project is focused.

K. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS-398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A-E). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant a full review by the Injury Research Grants Review Committee (IRGRC); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority

scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

A. The first review following the preliminary review (triage) will be a peer review to be conducted on all competitive applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested.

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. For competitive renewal applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plans, plans for inclusion of minorities and both sexes.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities, including pre-doctoral minority investigator(s).

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. An explanation of how the research findings will lead to feasible, cost-effective injury interventions.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives outlined under the section, 'Programmatic Priorities.'

3. National needs.

4. Overall distribution among:

- the major disciplines of violence-related injury prevention: social and behavioral science, biomechanics, and epidemiology;

- populations addressed (e.g., batterers, adolescents, racial and ethnic minorities, the elderly, children, urban, rural).

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two years duration).

6. Additional consideration will be given to those applicants who provide evidence of an injury research training program for pre-doctoral minority investigators.

C. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by this grant program will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947-47951.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Specialist (whose address is reflected in section B, "Applications"). It should be

postmarked no later than March 20, 1997. The letter should identify the announcement number, name the principal investigator, and specify the priority area of study the proposal addresses as outlined under the section Programmatic Priorities. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS-398 (OMB No. 0925-0001 Revised 5/95) and adhere to the ERRATA Instruction Sheet for Form PHS-398 contained in the Grant Application Kit. Please submit an original and five copies, on or before April 22, 1997, to: Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 842-6796.

C. Deadlines

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 723. You will receive a complete program description, information on application procedures, and application forms. Business management technical information may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6796 or internet: <lg1.cdc.gov>.

Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K-58, 4770 Buford Highway, NE., Atlanta, Georgia 30341-3724, telephone (770) 488-4824, internet: <tmj1.cdc.gov>.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is <http://www.cdc.gov>.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 723 when requesting information and submitting an application.

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) 512-1800.

Copies of Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993 and A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR-3, pages 5-11) may be obtained by calling (770) 488-4265.

Information for obtaining the suggested readings, Understanding Violence Against Women, Violence and the Public's Health, Understanding and Preventing Violence, and Violence in America: A Public Health Approach, is included on a separate sheet with the application kit.

Dated: February 11, 1997.

Joseph R. Carter,
Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97-4010 Filed 2-18-97; 8:45 am]

BILLING CODE 4163-18-P

Food and Drug Administration

[Docket No. 93F-0195]

Fish and Fishery Products Hazards and Controls Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the

availability of the first edition of the "Fish and Fishery Products Hazards and Controls Guide" (the guide). FDA has prepared the guide as, among other things, an adjunct to the regulations it issued on the safe and sanitary processing and importing of fish and fishery products using Hazard Analysis and Critical Control Point (HACCP) methodology.

DATES: Submit written comments on the guide by May 20, 1997. Comments received after that date will be considered for subsequent editions.

ADDRESSES: Submit written requests for single copies of the guide to the Office of Seafood (HFS-400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3133. The guide may also be obtained from FDA district offices (contact Donald Kraemer (address below) for FDA district office addresses). Send two self-addressed adhesive labels to assist those offices in processing your requests. Copies of the guide on diskette (in WordPerfect 6.0) may be ordered for \$30.00 each, plus handling, from the National Technical Information Service (NTIS), U.S. Department of Commerce, by calling 703-487-4650 and requesting PB96-503180. Paper copies may be ordered for \$30.00 each, plus handling, by requesting PB 96-207337. The diskette and paper copies may be ordered as a set for \$50.00, plus handling, by requesting PB96-207329. Payment may be made by charge card (American Express, VISA, or Mastercard), check, money order, or other billing arrangements made with NTIS. Rush orders may be placed by calling 800-553-NTIS. Persons with access to the Internet may obtain the guide via the World Wide Web at FDA's web site (<http://www.fda.gov>) by selecting "Foods" and then selecting "HACCP." Alternately, it may be accessed directly at <http://www.cfsan.fda.gov/~lrd/haccpsub.html>.

The guide is also being issued as a companion document to the "HACCP: Hazard Analysis Critical Control Point Training Curriculum" (the training document), which was developed by the Seafood HACCP Alliance for Training and Education (the Alliance). The Alliance is an organization of Federal and State regulators, including FDA, academia, and food industry trade associations. FDA encourages processors of fish and fishery products to use the two documents together in the development of their HACCP systems. Copies of the training document and the guide may be obtained from North Carolina Sea Grant, North Carolina State University, P.O.

Box 8605, Raleigh, NC 27695, 919-515-2454. The cost for both of these documents is \$35.00, payable by check or money order to "N.C. Sea Grant." Submit written comments on the guide 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. The guide and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Donald W. Kraemer, Center for Food Safety and Applied Nutrition (HFS-400), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3160.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 18, 1995 (60 FR 65096), FDA published a final rule entitled "Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products," which requires that HACCP principles be applied in the commercial processing of fish and fishery products for distribution in interstate commerce. HACCP involves: (1) The identification of food safety hazards that are reasonably likely to occur in a particular product; (2) the selection of the appropriate control measures to reduce the risk of occurrence of these hazards; and (3) the preparation of a HACCP plan that sets out how these measures will be applied.

To aid processors in responding to the new requirements and in developing their HACCP plans, FDA has developed the guide. The controls and practices provided in the guide are, for the most part, recommendations and guidance to the fish and fishery products industry. The guide provides information that will likely result in a HACCP plan that is acceptable to FDA under ordinary circumstances. However, the guide is in no way a binding set of requirements. Processors may choose to use other control measures, provided that they provide an equivalent degree of assurance that the product will be safe. Nor is the guide a substitute for the performance of a hazard analysis by a processor of fish or fishery products, as required by FDA's regulations. A hazard analysis is an assessment of what, if any, food safety hazards are reasonably likely to occur in a product being produced by a specific processor, and whether those hazards can be controlled by that processor. While the guide

contains FDA's best advice for most ordinary circumstances, it does not cover every situation. For example, hazards not covered by the guide may be relevant to certain products in certain circumstances. In particular, processors should be alert to new or emerging problems (e.g., the occurrence of natural toxins in fish not previously associated with that toxin).

In the Federal Register of March 18, 1994 (59 FR 12949), FDA published a notice of availability of a draft version of the guide (the draft guide) and requested comments on it. The agency has carefully reviewed the comments it received. Based on these comments, FDA has made significant changes in the format and content of the guide. Given the magnitude of the changes, FDA believes that additional comment by the public would be useful.

A number of comments stated that, while the draft guide provided useful information on fish and fishery products hazards and controls, it did not adequately explain how to develop a HACCP plan on the basis of this information.

In response to these comments, the agency has revised the guide to provide a step-by-step procedure for the preparation of a HACCP plan. The agency has tried to provide information that will help the processor answer questions that are likely to arise during this process.

To further facilitate HACCP plan development, the guide provides samples of key portions of HACCP plans for each of the categories of hazards that are discussed. The guide also contains a fill-in-the-blank HACCP plan and a blank hazard analysis worksheet that may be used by processors.

Many comments stressed that the draft guide unnecessarily restricted their flexibility in developing hazard control strategies that were uniquely tailored to their operations. It did so, they contended, by limiting its advice to only one or a few control strategies per hazard even though other strategies may also exist, depending upon the circumstances.

It was never the intent of the guide to limit a processor's flexibility to only the control strategies provided in the guide. The agency could not realistically provide advice on every valid control strategy that might be available under every circumstance. Nonetheless, the guide is intended to be as inclusive as is reasonably possible about known control strategies. Therefore, FDA has revised the guide to provide more control strategy examples than were provided in the draft guide. For example, the guide includes

recommended maximum exposure times for temperature-sensitive fishery products for a variety of exposure temperatures and target pathogens, rather than one "rule-of-thumb" maximum exposure time, as was the case in the draft guide.

The agency recognizes, however, that the inclusion of more control strategies greatly lengthens the guide and could make it more difficult for the smaller, less sophisticated processor to use. FDA specifically invites comment on whether this will in fact be the case and on whether the agency should attempt to develop an abbreviated version of the guide for those who might benefit from it.

The guide includes tables of potential food safety hazards that may be associated with the hundreds of species of fish (vertebrate and invertebrate), as well as the numerous product forms (e.g., breaded, cooked, raw), that are commercially marketed in the United States. These tables are designed to aid the processor in the performance of the hazard analysis.

A separate chapter is devoted to each category of hazard (e.g., parasites, natural toxins, pathogen growth, metal fragments). Each chapter includes the steps necessary to complete the hazard analysis and, ultimately, the HACCP plan for that hazard. These steps include: (1) Understanding the potential hazard; (2) determining whether the potential hazard is significant and must therefore be controlled; (3) identifying the critical control points, where the hazard can best be controlled; (4) setting the critical limits, to which the operation must be held at the critical control points; (5) establishing the monitoring procedures, to ensure that the critical limits are consistently being met; (6) establishing corrective action procedures for when the critical limit is not met; (7) establishing a recordkeeping system to document the performance of the monitoring, corrective action, and verification procedures; and (8) establishing verification procedures.

There are two areas that were addressed in the draft guide but are not included in the first edition because they are the subject of policy reevaluation by FDA. The agency will update the guide in these areas when the policy reevaluation is complete.

The first of these areas involves the chemical methyl mercury. A number of comments objected to the testing regimen that the draft guide recommended for the control of the methyl mercury hazard in certain species of fish. The agency's recommendation was based on the 1.0 part per million action level for methyl

mercury. While FDA has not changed this action level, the agency is reevaluating its policy in light of significant new data on the health effects of methyl mercury from consumption of fish that have become available since the action level was developed.

One other area in which the guidance contained in the guide is incomplete is the hazard of pathogens in raw fish and fishery products that are intended to be cooked by the consumer or end user. FDA policy identifies pathogens in such products as adulterants under the Federal Food, Drug, and Cosmetic Act. FDA is still evaluating what would constitute an appropriate hazard analysis, and what would constitute the appropriate HACCP controls for these products. The agency welcomes comment on this subject.

FDA expects that its reevaluation of the methyl mercury action level and its pathogen policy will be completed before the effective date of the regulations. When the reevaluation is completed, FDA will, among other things, update the guide by including advice on how to assess the significance of these potential hazards, and what controls, if any, are necessary to ensure the safety of fish.

The guide, which provides advice on how to prepare a HACCP plan when a plan is required by 21 CFR part 123, should be used until superseded by a subsequent edition. Although this guidance does not create or confer any rights, for or on any person, and does not operate to bind FDA, it does represent the agency's best thinking on how to prepare a HACCP plan for the processing of fish and fishery products.

Interested persons may, on or before May 20, 1997, submit to the Dockets Management Branch (address above) written comments on the guide for consideration in the preparation of the second edition of the guide. Comments received after that date will be considered for subsequent editions. 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 guide and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 11, 1997.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 97-4022 Filed 2-18-97; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[Document Identifier: HCFA-1514]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of currently approved collection; *Title of Information Collection:* Hospital Request for Certification in the Medicare/Medicaid Program; *Form No.:* HCFA-1514; *Use:* Section 1861 of the Social Security Act and 42 CFR part 482 requires hospitals to be certified to participate in the Medicare/Medicaid program. As part of the certification process, providers must complete form HCFA-1514. This certification form is a facility identification and screening form used to initiate the certification process and to determine if the provider has sufficient personnel to participate in the Medicare/Medicaid program. *Frequency:* Annually; *Affected Public:* State, Local or Tribal Gov't.; *Number of Respondents:* 2,500; *Total Annual Responses:* 2,500; *Total Annual Hours:* 625.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at <http://www.hcfa.gov/regs/prdact95.htm>, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer

designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: John Rudolph, Room C2-25-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: February 10, 1997.

Edwin J. Glatzel,
Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97-3985 Filed 2-18-97; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Title: FNB Workshop on Folate, Vitamin B-12, and Choline

AGENCY: Office of Disease Prevention and Health Promotion, HHS.

ACTION: Food and Nutrition Board Workshop on Folate, B-12, and Choline; notice of meeting and request for information.

SUMMARY: The Food and Nutrition Board (FNB), Institute of Medicine, National Academy of Sciences, under the auspices of the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, will hold an open workshop to address the nutrients folate, vitamin B-12, and choline.

DATES: The open meeting will be held from 12:30 until 5:30 p.m. E.S.T. on March 3, 1997, and from 8 a.m. until 12:30 p.m. E.S.T. on March 4, 1997, at the Jefferson Auditorium, U.S. Department of Agriculture South Building, 14th and Independence Avenue, S.W., Washington, D.C. The meeting is open to the public.

FOR FURTHER INFORMATION, CONTACT: Diane Johnson, Program Assistant, Food and Nutrition Board, 2101 Constitution Avenue, NW., Washington, D.C. 20418, (202) 334-1312, or send an e-mail to FNB@NAS.EDU.

SUPPLEMENTARY INFORMATION: Speakers have been invited to present evidence bearing on requirements and adverse effects, if any, of high levels of intake of folate, vitamin B-12, and choline. Information presented will be considered by the committee in its development of Dietary Reference Intakes for these nutrients. Interested individuals and organizations are encouraged to provide written scientific information for the committee's use. Those wishing to be considered for a brief oral presentation should submit an abstract with references to FNB, 2101 Constitution Ave., NW, Washington, DC 20418, by February 24, 1997. The study

for which this meeting is being held is supported by the Department of Health and Human Services (Office of Disease Prevention and Health Promotion, Office of Public Health and Science; the Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention; and the Office of Dietary Supplements, National Institutes of Health).

The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Diane Johnson (202) 334-1312 by 4:30 p.m. E.S.T. on February 21, 1997.

Dated: February 6, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Department of Health and Human Services.

[FR Doc. 97-4040 Filed 2-18-97; 8:45 am]

BILLING CODE 4160-17-M

Office of Public Health and Science; Notice of Partnership Initiative

Pursuant to Title XVII of the Public Health Service Act, notice is hereby given that the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, is seeking partnerships with non-Federal organizations to promote, distribute and encourage the implementation of "Put Prevention into Practice." "Put Prevention into Practice" is a system-based approach to implementing the recommendations of the United States Preventive Services Task Force, targeting patients, clinicians, and medical offices. The goal is to increase the impact of "Put Prevention into Practice" by forming partnerships with private sector organizations. These cooperative efforts are intended to bring the resources of several partners to bear on the implementation of clinical preventive services guidelines and on the efforts to increase the delivery of appropriate clinical preventive services, efforts that are too complex for any one organization to handle alone. Organizations with particular experience, expertise or interest in the development, marketing and distribution of prevention-related materials to the general public, professional organizations and managed care organizations will be well-aligned with current and planned initiatives of "Put Prevention into Practice" activities.

Note: Partnerships between ODPHP and outside organizations will be formalized

through Memorandum of Agreements and will not involve grants or contracts.

Date of Effectiveness: February 19, 1997.

For more information, please contact Rika Maeshiro, M.D., M.P.H., Senior Clinical Affairs Advisor, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, at 202-690-7943.

Dated: February 10, 1997.

Claude Earl Fox,

Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 97-4039 Filed 2-18-97; 8:45 am]

BILLING CODE 4160-17-M

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in April 1997.

The Drug Testing Advisory Board (DTAB) is having a 3-day scientific meeting to discuss drug testing alternative specimens and technologies as they apply to workplace drug testing programs. The entire meeting is open to the public; however, attendance by the public will be limited to space available. The first two days will consist of presentations on the principles and criteria of workplace drug testing program requirements and industry representatives discussing alternative specimens/technologies (urine, hair, saliva, sweat, and non-instrument based on-site tests). The presentations will be focused on the following areas for each alternative specimen/technology: specimen collection and chain of custody, initial test reagents and procedures, confirmatory test procedures, internal quality control program, reporting test results, interpreting test results, and an external quality assurance program. On the third day, the DTAB will review the presentations, identify areas of concern, and make recommendations concerning those specimens/technologies for workplace drug testing.

Interested persons may present information or views, orally or in writing, on these issues pending before the Board. Those desiring to make formal presentations should notify the contact person before March 7. A coordinator for each alternative specimen/technology will select the presenters. The presenters who will discuss the underlying principles and

criteria for each major topic are required to submit their presentations in writing at least four weeks before the meeting. These will be shared with all presenters at least 3 weeks before the meeting. The presenters describing how each type of specimen and/or technology satisfies, or does not satisfy, the requirements (each presentation is limited to 15 minutes) are required to submit their presentations in written form at least two weeks before the meeting. These will be shared with all presenters.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 13A-54, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443-6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: April 28-30, 1997.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Open: April 28-30, 1997, 8:30 a.m.-5:00 p.m.

Contact: Donna M. Bush, Ph.D.; Executive Secretary, Telephone: (301) 443-6014 and FAX: (301) 443-3031.

Dated: February 12, 1997.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 97-3956 Filed 2-18-97; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4170-N-04]

Notice of Native American Housing Assistance and Self-Determination Act of 1996 Implementation Meetings

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

ACTION: Notice of implementation meetings for the Native American Housing Assistance and Self-Determination Act of 1996.

SUMMARY: This notice announces preliminary meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104-330, approved October 26, 1996).

DATES: The meetings will be held on February 25, 26, 27, and 28, 1997.

ADDRESSES: The meetings will be held at the National Office of Native American

Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675-1600 (voice) or 1-800-877-8339 (TTY for speech or hearing impaired individuals). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD will hold a series of meetings on February 25, 26, 27, and 28, 1997 in the National Office of its Office of Native American Programs to discuss the regulatory implementation of NAHASDA. The meetings to be held on these dates will be preliminary meetings to develop the regulations necessary to carry out NAHASDA.

On January 27, 1997 (62 FR 3976), HUD published a notice announcing the requirements necessary to provide for the transition from the provision of assistance for Indian tribes and Indian housing authorities under the United States Housing Act of 1937 and other related provisions of law to the block grant provision of assistance provided under NAHASDA. The January 27, 1997 notice also provided notice of the negotiated rulemaking process for the development of regulations necessary to implement the new block grant program.

Dated: February 13, 1997.

Kevin Emanuel Marchman,
Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97-4135 Filed 2-18-97; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE INTERIOR

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Housing Assistance Application requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3506(c)(2)(A). The Bureau

is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Interested parties are invited to submit written comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to June Henkel, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS-4603-MIB, Washington, D.C. 20240.

All written comments will be available for public inspection in Room 4603 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instructions should be directed to June Henkel, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS-4603, Washington, D.C. 20240, and 202/208-3667. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether an applicant is eligible to receive services under the Housing Improvement Program (HIP) and to establish the priority order in which eligible applicants may receive services under the program.

II. Method of Collection

The housing regulations at 25 CFR Part 256 contain the program eligibility and selection criteria (§ 256.6, .7) which prospective applicants seeking program services must demonstrate that they meet. Information collected from applicants under these regulations provides eligibility and selection data used by the local servicing housing office to establish whether an applicant is eligible to receive services under the program and in what priority order the applicants are eligible to receive services. The local servicing housing office may be a tribal housing office under a Public Law 93-638, Indian Self-Determination contract or a Self-Governance annual funding agreement, or the Bureau of Indian Affairs. Additionally, the data is used by the Assistant Secretary—Indian Affairs to establish whether a request for waiver of a specific housing regulation is in the best interest of the applicant and the Federal government.

III. Data

(1) Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Housing Assistance Application.

OMB Number: 1076-0084.

Expiration Date: February 28, 1997.

Type of Review: Renewal of a currently approved information collection.

(2) Summary of the Collection of Information: The collection of information provides pertinent data concerning an applicant's eligibility to receive services under the Housing Improvement Program and includes:

A. Applicant Information including: Name, Current Address, Telephone Number, Date of Birth, Social Security Number, Tribe, Roll Number, Marital Status, Name of Spouse, Date of Birth (of spouse), Social Security Number (of spouse), Tribe (of spouse), and Roll Number (of spouse).

B. Family Information including: Name, Date of Birth, Social Security Number, Relationship to Applicant, and Tribe/Roll Number.

C. Income Information including: Earned and Unearned Income.

D. Housing Information including: Location of the house to be repaired, constructed or purchased; Description of housing assistance for which applying; Knowledge of receipt of prior Housing Improvement Program assistance, amount, to whom and when; Ownership or rental; Availability of electricity and name of electric company; Type of sewer system; Water source; Number of bedrooms; Size of house; and, Bathroom facilities.

E. Land Information including: land owner; legal status of land; or, type of interest in land.

F. General Information including: Prior receipt of services under the Housing Improvement Program and description of such; Ownership of other housing and description of such, Identification of Housing and Urban Development (HUD) funded house and current status of project; Identification of other sources of housing assistance for which the applicant has applied and been denied assistance if applying for a new housing unit or purchase of an existing standard unit; and, advisement and description of any severe health problem, handicap or permanent disability.

G. Applicant Certification including: Signature of Applicant and Date, and Signature of Spouse and Date.

(3) Description of the need for the information and proposed use of the information: Submission of this information is required in order to

receive services under the Housing Improvement Program. The information is collected to determine applicant eligibility for services and applicant priority order to receive services under the program.

(4) Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information: Description of likely respondents: Individual members of Indian tribes who are living on or near a tribally, or by law, defined service area.

Estimated number of respondents: 3,500.

Proposed frequency of response: Annually or less frequently, depending on length of waiting list, funding availability and dynamics of service population.

(5) Estimate of total annual reporting and record keeping burden that will result from the collection of information:

Estimated time per application: The reporting burden for this application is estimated to average 1/2 hour per response, including the time for reviewing the instructions, gathering and maintaining the data, and completing and reviewing the form.

Estimated total Annual Burden Hours: 1750 hours.

Estimated total Record Keeping Burden: 1300 hours.

Estimated Annual Record Keeping Costs: \$52,000 (1300 hours x \$40.00 per hour).

IV. Request for Comments

The Department of the Interior invites comment on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) the accuracy of the agencies' estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) ways to enhance the quality, utility, and clarity of the information to be collected; and,
- (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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 Office of Management and Budget control number.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97-4001 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-02-P

Bureau of Indian Affairs, Interior.

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, codified at 25 CFR § 23.13, requires renewal. Before submitting a request for reinstatement, without change, of a previously approved collection for which approval has expired, to the Office of Management and Budget (OMB), the Department of the Interior is soliciting public comments on this information collection as required by the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Direct all written comments to Betty Tippeconnie, Bureau of Indian Affairs (Bureau), Department of the Interior, 1849 C Street, NW, MS-4603 MB, Washington, D.C. 20240.

All written comments will be available for public inspection in Room 4603 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday

through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Betty Tippeconnie, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS-4603 MB, Washington, D.C. 20240, and 202/208-2721. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Abstract

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a state court for which appointment of counsel is not authorized by state law shall send written notice to the Bureau. The cognizant Bureau Area Director, using this information, can certify if the client in the notice is eligible to have his

counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95-608.

II. Method of Collection

The following information is collected in a notice from state courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collected and the reasons for the collection are listed below:

Information Collected	Reason for Collection
(a) Name, address and telephone number of attorney appointed; (b) Name and address of client for whom counsel is appointed; (c) Applicant's relationship to child; (d) Name of Indian child's tribe; (e) Copy of petition or complaint; (f) Certification by the court that state law does not provide for appointment of counsel in such proceedings; (g) Certification by the court that the Indian client is indigent; (h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings; (i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings.	(a) To identify attorney appointed as counsel/and method of contact; (b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed; (c) To determine if the person is eligible for payment of attorney fees as specified in P.L. 95-608; (d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA); (e) To determine if this custody proceeding is covered by the ICWA; (f) To determine if other state laws provide for such appointment of counsel and to prevent duplication of effort; (g) To determine if the client has resources to pay for counsel; (h) To determine if the amount of payment due appointed counsel is based on state court standards in juvenile delinquency proceedings; (i) To determine the amount of payment considered reasonable in accordance with state standards for a particular case.

Proposed use of the information: The information collected will be used by the respective Bureau Area Director to determine: (a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees, (b) If any state statutes provide for coverage of attorney fees under these circumstances, (c) The state standards for payment of attorney fees in juvenile delinquency proceedings, (d) The name of the attorney, and his actual voucher certified by the court for the work completed on a preapproved case. This information is required for payment of appointed counsel as authorized by Public Law 95-608.

III. Data

(1) Title of the Collection of Information: Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

OMB Number: 1076-0111.

Expiration Date: February 28, 1997.

Type of Review: Reinstatement of a previously approved information collection for which approval has expired.

Affected Entities: State Courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13.

Estimated number of respondents: 4.

Proposed frequency of response: 1.

(2) Estimate of total annual reporting and record keeping burden that will result from the collection of this information: 12 hours.

Reporting: 2 hours/response $\times$ 4 respondents = 8 hours.

Recordkeeping: 1 hour/response $\times$ 4 respondents = 4 hours.

Estimated Total Annual Burden Hours = 12 hours

Estimated Annual Costs: \$540.00 (12 hours $\times$ \$45.00 per hour).

(3) Description of the need for the information and proposed use of the information: Submission of this information is required in order to receive payment for appointed counsel under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

IV. Request for Comments

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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 Office of Management and Budget control number.

Dated: February 11, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97-4002 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-02-P

Office of the Secretary

[DD 1230R01 (P)]

American Indian Sacred Sites Consultation Meetings

AGENCY: Office of the Assistant Secretary for Indian Affairs, Office of the Secretary of Interior.

ACTION: Notice of federal-tribal government-to-government consultation on Executive Order No. 13007—Indian Sacred Sites.

SUMMARY: The Department of the Interior hereby gives notice of three, two-day federal-tribal consultation sessions on the implementation of President Clinton's Executive Order No. 13007—Indian Sacred Sites. The Executive Order calls for the development of policies and procedures to protect Indian sacred sites on federal lands and to assure American Indians and Alaska Natives access to the sites. The Departments of Justice, Energy and Agriculture have accepted Interior's invitation to participate in the consultation sessions, as well. Tribal leaders or representatives are invited to attend one of the three sessions.

A discussion group format along with opening and closing plenary sessions will be used to ensure that each tribal representative has the opportunity to speak and engage in open dialogue with federal representatives. Discussion topics will include: Protecting the Physical Integrity of Indian Sacred Sites; Concerns with regard to Confidentiality of Indian Sacred Sites; Effecting Accommodation; Dispute Resolution; and Meaningful Government-to-Government Coordination, among others.

Any tribe unable to participate in the sessions is encourage to send written comments on the implementation of the Executive Order and the topics listed above no later than April 11, 1997. All written comments will be given equal consideration in the preparation of implementing policies and procedures.

DATES AND LOCATIONS: Portland Consultation Session will be held on March 12-13, 1997 at the Red Lion

Jentzen Beach Hotel, 909 N. Hayden Drive, Portland, Oregon.

Denver Consultation Session will be held on March 19-20 at the Red Lion Hotel-Denver, 3203 Quebec Street, Denver, Colorado.

Washington, D.C. Consultation Session will be held on April 3-4, 1997 at the U.S. Geological Survey Headquarter Office, 12201 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Elizabeth Homer, Department of the Interior, Office of American Indian Trust, 1849 "C" Street, N.W., Washington, D.C., 20240 telephone (202) 208-3338.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97-4036 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-02-P

Bureau of Land Management

[NV-930-07-1430-01; N-61069]

Notice of Realty Action, Direct Sale of Public Land, Humboldt Co., Nevada

ACTION: Notice of Realty Action, Direct Sale of Public Land, Humboldt County, Nevada.

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 36 N., R. 37 E., Sec. 32, all,

Containing approximately 640 acres.

The above described lands are hereby classified for disposal in accordance with Executive Order 6910 and the Act of June 28, 1934, as amended. The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. The land is being offered by direct sale to Winnemucca Farms. It has been determined that the subject parcel contains no known mineral values. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a \$50.00 non-refundable filing fee for conveyance of the said mineral interests. The land will not be offered for sale until at least 60 days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of

Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445, (702) 623-1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Winnemucca Farms for agricultural purposes. They plan to irrigate the parcel of land with process water from their potato processing facility located near Winnemucca. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the Federal Register, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservation to the United States:

A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

And Will be Subject to:

1. Those rights for railroad purposes granted to Union Pacific Railroad by Right-of-way CC-04692.

2. Those rights for a fiber-optic communication line granted to U.S. Sprint by Right-of-way N-42787.

3. Those rights for a powerline granted to Sierra Pacific Power Company by Right-of-way N-43040.

4. Those rights for a communication line granted to Nevada Bell by Right-of-way N-51360.

5. Those rights for an access road granted to Cyanco by Right-of-way N-51585.

6. An easement 30 feet in width along the north, east, west, and south boundaries of the section, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

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, Winnemucca District Office, Bureau of Land Management, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: February 5, 1997.

Ron Wenker,

District Manager.

[FR Doc. 97-3986 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-HC-P

National Park Service**60-day Notice of Intention to Request Clearance of Information Collection; Opportunity for Public Comment**

AGENCY: Department of the Interior, National Park Service, Great Sand Dunes National Monument.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

The Primary Purpose of the Proposed ICR: The information collection survey will be conducted to obtain information about visitor use within the monument. Results of this survey will be used by the National Park Service to create the Great Sand Dunes National Monument General Management Plan. In order to estimate the test time, four people were asked to take the survey. The average time taken to complete the survey was four minutes.

DATES: Public comments on the proposed ICR will be accepted on or before April 21, 1997.

ADDRESSES: Send comments to Wenonah E. Skye, Outdoor Recreation Planner, IMFA-RM-S, National Park Service, 12795 W. Alameda Parkway, Post Office Box 25287, Denver, Colorado 80225-0287.

All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of the proposed ICR requirements and draft survey can be obtained from Wenonah E. Skye, Outdoor Recreation Planner, IMFA-RM-S, National Park Service, 12795 W. Alameda Parkway, P.O. Box 25287, Denver, Colorado 80225-0287.

FOR FURTHER INFORMATION CONTACT: Wenonah E. Skye, 303-969-2834.

SUPPLEMENTARY INFORMATION:

Title: Visitor Survey, Great Sand Dunes National Monument.

Form: None.

OMB Number: To be requested.

Expiration date: To be requested.

Type of request: Visitor survey.

Description of need: For collecting visitor use information for the Great Sand Dunes National Monument general management plan during 1997.

Description of respondents: Individuals who visit the monument.

Estimated annual reporting burden: 20 burden hours.

Estimated average burden hours per response: 4 minutes.

Estimated average number of respondents: 120.

Estimated frequency of response: Once.

Dated: February 12, 1997

Terry N. Tesar,

Information Collection Clearance Officer,
Accountability and Audits Team.

[FR Doc. 97-4041 Filed 2-18-97; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE**Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Ace Galvanizing, Inc., et al.*, Civil Action No 97-152C, was lodged on January 30, 1997, with the United States District Court for the Western District of Washington. The Consent Decree requires each defendant to compensate the trustees for natural resource damages at the Site, the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior, for natural resource damages at the Site that have resulted from the release of hazardous substances at the Site. Under the Consent Decree, 185 *de minimis* waste contributors will pay a total of \$741,546.00 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and National Resources Division,

Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Ace Galvanizing, Inc., et al.*, DOJ Ref. #90-11-3-1412a.

The proposed consent decree may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of \$5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement
Section, Environment and Natural Resources
Division.

[FR Doc. 97-3987 Filed 2-18-97; 8:45 am]

BILLING CODE 4410-15-M

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, and the Emergency Planning and Community Right-To-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States versus The Sherwin-Williams Company*, Civil Action No. 93-C-4267, was lodged with the United States District Court for the Northern District of Illinois on February 6, 1997. This proposed consent decree would resolve the United States' civil claims against The Sherwin-Williams Company under Subchapter III of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. 6921 *et seq.*; the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*; Subchapter IX of RCRA, 42 U.S.C. 6991 *et seq.*; and the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 *et seq.* Under the terms of the proposed consent decree, Sherwin-Williams will pay a civil penalty of \$4.7 million, perform supplemental environmental projects that will cost the company a total of \$1.1 million, undertake a corrective action to investigate and remediate contamination to the soil and groundwater at and emanating from the

company's Chicago facility, and perform other injunctive relief.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States versus The Sherwin-Williams Company*, Civil Action No. 93-C-4267, and the Department of Justice Reference No. 90-5-2-1-1829.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Building, Room 1200, 219 South Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$32.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.*
[FR Doc. 97-3988 Filed 2-18-97; 8:45 am]

BILLING CODE 4410-15-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Draft Environmental Assessment

AGENCY: United States Section,
International Boundary and Water
Commission, United States and Mexico.

ACTION: Notice of availability of Draft
Environmental Assessment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the Operational Procedures of the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), for Implementing Section 102 of NEPA, published in the Federal Register September 2, 1981 (46FR

44083-44094); the USIBWC hereby gives notice that a Draft Environmental Assessment (DEA) prepared by TransTexas Gas Corporation (TransTexas), Houston, Texas, to address the potential adverse environmental impacts of placement of a natural gas well pad and associated works within the Falcon Dam and Reservoir Project, Zapata County, Texas, is available for review and comment. The DEA addresses the proposed action for the USIBWC to issue a land use permit to TransTexas to construct a drill pad for the purpose of drilling natural gas wells on an island located on USIBWC real property within the international Falcon Reservoir.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C-310, El Paso, Texas 79902-1441. Telephone: 915/534-6704.

SUPPLEMENTARY INFORMATION: In January, 1996, TransTexas Gas Corporation (TransTexas) requested the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), to grant them permission to construct a drill pad site above the 307-foot mean sea level elevation on an island located within USIBWC real property below the 307-foot elevation traverse (the United States property line also called the "307-foot traverse") within the international Falcon Reservoir for the purpose of drilling eight natural gas wells. The construction of the well pad at the location referred to as Porcion 18 within the reservoir is desirable, due mainly to technical constraints associated with current directional drilling, to enable the full development of private and public gas reserves in the western portion of TransTexas' gas lease area. The gas lease area is situated entirely under Falcon Reservoir with very limited land available to reach the required bottom hole locations.

The USIBWC began coordination with the United States Bureau of Land Management (BLM), the federal authorizing agency which would approve an application by TransTexas for a permit to drill for federal reserves within the reservoir. BLM indicated it would not approve the application for permit to drill until the USIBWC determined whether it would waive the stipulation that prohibits oil and natural gas development at that site. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced

document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determination of the significance of the impacts of the federal action of the USIBWC granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir. A programmatic environmental assessment that addresses the USIBWC's granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir is being processed under separate notice in the Federal Register. Although this site specific environmental assessment is prepared and processed simultaneously with the Draft Programmatic Environmental Assessment for potential oil and natural gas development below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation, no final action will be taken on this site specific document until the PEA is complete and final action is declared on it.

Proposed Action

The action proposed is for the USIBWC to issue a land use permit to TransTexas to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot traverse property line within Falcon Reservoir for the purpose of drilling eight natural gas wells. This would be the first time for the USIBWC to grant an exception to its policy of prohibiting oil and gas development upon USIBWC real property under Falcon Reservoir and is dependent upon the outcome of the PEA.

Alternatives Considered

Two alternatives were considered in the Draft Environmental Assessment (DEA):

The Proposed Action Alternative is for the USIBWC to issue a land use permit to TransTexas to construct a drill pad site on an island above the 307-foot mean sea level elevation located on USIBWC real property below the 307-foot traverse property line within Falcon Reservoir. The USIBWC would issue the land use permit if it makes the determination to allow exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under the reservoir and if BLM approves the application for permit to drill for public reserves located within the reservoir. The USIBWC land use permit takes into consideration that such works do not interfere with the

operation and maintenance of the Falcon Dam and Reservoir Project. No final action will be taken on this site specific document until the Programmatic Environmental Assessment is complete and final action is declared on it.

The No Action Alternative is for the USIBWC to not issue a land use permit to TransTexas to construct a drill pad and associated works on an island on USIBWC real property at Porcion 18 at Falcon Reservoir. BLM would only be able to approve an application for permit to drill from a site above the 307-foot traverse property line; hence outside the reservoir. TransTexas would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the western portion of TransTexas' lease area; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Environmental Assessment

The USIBWC has coordinated with BLM, the agency responsible for permitting Federal reserves within the reservoir, and TransTexas in the development of the Draft Environmental Assessment (DEA). The DEA is tiered from the PEA and describes the historical and existing development of oil and natural gas in the general vicinity (but above the 307-foot traverse property line) of the reservoir and the planned oil and natural gas activities within or adjacent to the Porcion 18 site. It analyzes the specific impacts expected from natural gas development in the foreseeable future and the cumulative environmental impacts of natural gas development upon USIBWC real property at Falcon Reservoir. The Draft EA discusses mitigation measures to avoid impacts to and minimize degradation of environmental resources within and adjacent to the reservoir. The USIBWC approved the completed DEA from TransTexas for proposed natural gas development at Porcion 18, and it is currently available for review and comment.

Finding of the Environmental Assessment

Final action on this site specific DEA will not be taken until the Programmatic Environmental Assessment is complete and final action is declared on it. The

DEA indicates that the proposed action for the USIBWC to issue a land use permit for natural gas development within the USIBWC real property at Porcion 18 at Falcon Reservoir does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. Construction, drilling and production activities at the Porcion 18 swell pad site will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust shall be used, and emissions will be minimized through properly maintained equipment.

2. The slight impacts from construction, drilling and production activities associated with noise at the Porcion 18 well pad site are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of development at the Porcion 18 well pad site, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources shall be protected from impacts by total avoidance of clearing within the heavy brush corridor adjacent to Porcion 18, reptile exclusion fences around the drill pad location, and an interior least tern monitoring plan coordinated by the appropriate federal and state conservation agencies. Based on site surveys, federally listed species are not likely to be adversely affected by the proposed action provided these mitigation measures are followed.

5. Impacts to cultural resources shall be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and implementation of a Memorandum of Agreement for mitigating impacts if avoidance is not viable. These measures shall be completed prior to BLM approval of the application for permit to drill, USIBWC issuance of a land use permit, and any development at the Porcion 18 drill site. Additionally, construction activity shall be monitored by a qualified archaeologist with full authority to terminate construction if cultural resources are likely to be impacted at the site.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigable through properly placed night lighting, painting of the facility to blend with the surrounding terrain and vegetation, and alignment of the access road and utility corridor to limit the view of the facility from the shoreline.

Availability

The DEA is available for public review at the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545; and it has also been distributed to Federal, State, and local agencies and organizations that have been consulted and coordinated with in the preparation of the DEA. A limited number of copies are available to fill single copy requests at the above address. The USIBWC will not take final action on this DEA until the Draft Programmatic Environmental Assessment is complete and final action is declared on it.

Dated: February 10, 1997.

Randall A. McMains,
Attorney.

[FR Doc. 97-4009 Filed 2-18-97; 8:45 am]

BILLING CODE 4710-03-M

Finding of No Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.
ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Based on a Draft Programmatic Environmental Assessment (PEA) prepared by TransTexas Gas Corporation (TransTexas), Houston, Texas, to address the potential adverse environmental impacts of oil and natural gas development within the Falcon Dam and Reservoir Project, Starr and Zapata counties, Texas; the United States Section, international Boundary and Water Commission, United States and Mexico (USIBWC), finds that the proposed action to grant exceptions to the USIBWC policy of prohibiting development within the reservoir is not a major federal action that would have a significant adverse effect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508); and the USIBWC's Operational Procedures for Implementing Section 102 of NEPA, published in the Federal Register September 2, 1981 (46FR 44083-44094); the USIBWC hereby

gives notice that an environmental impact statement will not be prepared for the proposed action.

ADDRESSES: Mr. Yusuf E. Farran, Division Engineer, Environmental Management Division, United States Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C-310, El Paso, Texas 79902-1441. Telephone: 915/534-6704.

SUPPLEMENTARY INFORMATION: In January, 1996, TransTexas Gas Corporation (TransTexas) requested the United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC), to grant them permission to install a drill pad site above the 307-foot mean sea level elevation on an island located within USIBWC real property below the 307-foot elevation traverse (the United States property line also called the "307-foot traverse") within the international Falcon Reservoir for the purpose of drilling eight natural gas wells. The construction of the drill pad on an island within the reservoir is desirable, due mainly to technical constraints associated with current directional drilling, to enable the full development of private and public gas reserves in the western portion of TransTexas' lease area. The gas lease area is situated entirely under Falcon Reservoir with very limited land available to reach the required bottom hole locations.

The USIBWC began coordination with the United States Bureau of Land Management (BLM), the federal authorizing agency which would approve an application by TransTexas for a permit to drill for federal reserves within the reservoir. BLM indicated it would not approve the application for permit to drill until the USIBWC determined whether it would waive the stipulation that prohibits oil and natural gas development at the site below the 307-foot traverse. Both agencies agreed that due to a lack of both funding resources and human resources for an agency produced document and an immediate need by TransTexas to gain access to private and public reserves within the reservoir, a third party environmental analysis would be acceptable for determination of the significance of the impacts of the federal action of the USIBWC granting exceptions to its policy of prohibiting any mineral exploration or development within its property at Falcon Reservoir. The USIBWC approved a scope of work submitted by TransTexas and requested it to develop, to the satisfaction of the USIBWC, a programmatic

environmental assessment that addresses the USIBWC's granting exceptions to its policy of prohibiting any mineral exploration or development upon USIBWC real property within Falcon Reservoir.

Proposed Action

The action proposed is for the USIBWC to grant exceptions on a case-by-case basis to its policy of prohibiting oil and gas development upon USIBWC real property under Falcon Reservoir. Stipulation Number 1 is found in the special stipulations attached to and made a part of all BLM oil and gas leases for the Falcon Dam and Reservoir Project, and it reads as follows:

The lessee understands and agrees that a negative easement is imposed in and upon said land to prohibit the drilling or deepening of any well for the purpose of producing oil and/or gas and other minerals provided, however, that exploration and development of oil and/or gas and other minerals under said land will be permitted by directional drilling from locations off the said land and above the 307-foot elevation traverse.

The proposed action would alter USIBWC policy so that limited exceptions may be granted in appropriate cases, allowing some oil and gas exploration and development on USIBWC real property located below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation.

Alternatives Considered

Two alternatives were considered in the Draft Programmatic Environmental Assessment (PEA):

The Proposed Action Alternative is for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir on a case-by-case basis. If the USIBWC makes the determination to allow exceptions to this prohibition, BLM could then approve applications for permits to drill for oil and gas reserves located within the reservoir. Separate environmental assessments would then be prepared by project proponents tiered from this PEA to address the specific impacts of drilling for oil and natural gas at specific locations within the reservoir, and the USIBWC would consider issuing land use permits to ensure that such works do not interfere with the operation and maintenance of the Falcon Dam and Reservoir Project. A site specific environmental assessment prepared by TransTexas that addresses the impacts of natural gas development upon USIBWC real property under Falcon Reservoir is concurrently being

processed under separate notice in the Federal Register. Although the site specific document is prepared and processed simultaneously with this Draft Programmatic Environmental Assessment for potential oil and natural gas development on USIBWC real property located below the 307-foot traverse property line at Falcon Reservoir, no final action will be taken on the site specific document until the PEA is complete and final action is declared on it.

The No Action Alternative is for the USIBWC to not grant any exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir. BLM would only be able to approve applications for permits to drill from sites above the 307-foot traverse property line; hence outside the reservoir. Project proponents would need to consider use of alternative means to recover private and public natural gas reserves within the reservoir. Since no oil and natural gas development would be done within the Falcon Reservoir, the USIBWC would not issue land use permits to project proponents. The no action alternative would result in no development below the 307-foot traverse for private and public reserves in the reservoir; avoidance of any potential impacts associated with the proposed action; the loss of tax and royalty revenues to the local, state and federal governments; the loss of royalty revenues to mineral owners; and the loss of an otherwise recoverable clean energy source.

Programmatic Environmental Assessment

The USIBWC has coordinated with BLM, the agency responsible for permitting federal reserves within the reservoir, and TransTexas in the development of the Draft Programmatic Environmental Assessment (PEA). The PEA describes the historical and existing development of oil and natural gas in the general vicinity (but above the 307-foot traverse property line) of the reservoir area and the planned oil and natural gas activities within or adjacent to potential drill sites on the United States side of the international reservoir in the reasonably foreseeable future. It analyzes the general impacts expected from such development in the foreseeable future and the cumulative environmental impacts of oil and natural gas development within Falcon Reservoir. The Draft PEA discusses mitigation measures to minimize degradation of environmental resources within and adjacent to the reservoir.

The PEA is envisioned to serve as a baseline environmental document from which other drilling proponents and permit applicants will be able to tier site specific environmental assessments for similar activities within the reservoir area. The USIBWC reviewed and approved the completed Draft PEA from TransTexas for proposed oil and gas development within the reservoir, and it is currently available for review and comment.

Finding of the Programmatic Environmental Assessment

The PEA finds that the proposed action for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property below the 307-foot traverse property line at Falcon Reservoir but above the 307-foot mean sea level elevation does not constitute a major federal action which would cause a significant local, regional, or national adverse impact on the environment based on the following facts:

1. Construction, drilling and production activities at potential well pad sites will have no significant adverse impacts on air quality. Standard construction practices to control fugitive dust would be utilized.

2. The slight impacts from construction, drilling and production activities associated with noise at potential well pad sites are fully mitigable through vegetative buffer zones, equipment noise suppressors, and avoidance of critical wildlife use periods.

3. Negligible impacts to geologic and water resources are mitigable through the use of erosion and sediment control measures and devices, secondary containment measures, best management practices during all phases of site development, and use of site specific spill prevention control and countermeasure plans.

4. Biological resources will be protected from impacts by total avoidance of clearing within heavy brush corridors, animal exclusion fences around drill pad locations, site specific surveys for threatened and endangered plants and animals, and monitoring plans coordinated by the appropriate federal and state conservation agencies.

5. Impacts to cultural resources can be mitigated through avoidance of sites determined to be eligible for the National Register of Historic Places and if avoidance is not viable, implementation of a Memorandum of Agreement for mitigating impacts will be necessary prior to BLM approval of applications for permits to drill, USIBWC issuance of land use permits,

and any development at potential drill sites.

6. Negligible impacts associated with land use and transportation will not require additional mitigation.

7. Negligible impacts associated with visual resources are mitigable through properly placed night lighting, unobtrusive painting of facilities, and alignment of access road and utility corridors for limited views of individual project facilities.

On the basis of the TransTexas Draft PEA, the USIBWC has determined that an environmental impact statement is not required for the USIBWC to grant exceptions to its policy of prohibiting oil and natural gas development upon USIBWC real property under Falcon Reservoir and hereby provides notice of a finding of no significant impact (FONSI). An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice. Copies of the Draft PEA are available for public review at the USIBWC Falcon Dam Field Office, Falcon Road, Falcon Heights, Texas 78545, and have been distributed to Federal, State, and local agencies and organizations that have been consulted and coordinated within the preparation of the PEA. A limited number of copies are available to fill single copy requests at the above address.

Dated: February 10, 1997.

Randall A. McMains,
Attorney.

[FR Doc. 97-4018 Filed 2-18-97; 8:45 am]

BILLING CODE 4710-03-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-362]

Southern California Edison Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-15, issued to Southern California Edison Company (the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Unit No. 3 located in San Diego County, California.

The proposed amendment would defer implementation of Surveillance Requirement (SR) 3.1.5.4 of Technical Specification 3.1.5, "CEA Alignment"

until no later than the next SONGS Unit 3 refueling outage (currently scheduled to begin on April 12, 1997).

The exigent circumstances for this amendment request exist due to the recent discovery of the inappropriate crediting of previous test results to this post-Technical Specification Improvement Program SR.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would defer the implementation of Surveillance Requirement (SR) 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Based on testing, operating experience, and the inherent reliability of the system, Edison concludes the Reed Switch Position Transmitters have demonstrated their capability to perform their specified safety function and are operable. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would defer the implementation of Surveillance Requirement (SR) SR 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage.

Operation of the facility would remain unchanged as a result of the proposed change. The Reed Switch Position Transmitters cannot initiate an accident.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would defer the implementation of Surveillance Requirement (SR) SR 3.1.5.4 of Technical Specification (TS) 3.1.5 until the Unit 3, Cycle 9 refueling outage. The Reed Switch Position Transmitters are concluded to be able to perform their safety function and are operable. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, MD, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 21, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the

proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may

be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William H. Bateman, Director, Project Directorate IV-2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, CA 91770, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 7, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, CA 92713.

Dated at Rockville, Maryland, this 12th day of February 1997.

For the Nuclear Regulatory Commission.
Mel B. Fields,
*Project Manager, Project Directorate IV-2,
Division of Reactor Projects III/IV, Office of
Nuclear Reactor Regulation.*
[FR Doc. 97-4055 Filed 2-18-97; 8:45 am]
BILLING CODE 7590-01-P

The Lobbying Disclosure Act of 1995: Covered Officials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) is adding to its list of "covered officials", for purposes of

the Lobbying Disclosure Act of 1995, the NRC's Chief Information Officer.

SUPPLEMENTARY INFORMATION:

Background

In late 1995, President Clinton signed into law the Lobbying Disclosure Act of 1995 (the "Act"), which requires some individuals and entities who lobby "covered" Federal officials to register with Congress and to file semiannual reports describing their lobbying activities.

For purposes of the Act, the NRC had determined that "covered" officials at the NRC were limited to Members of the Commission and their personal staffs, the Inspector General, the Executive Director for Operations, the General Counsel, and the Directors of the Offices of Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards and Nuclear Regulatory Research. See Federal Register of February 1, 1996 (61 FR 3737).

As a result of the enactment of the Information Technology Management Reform Act of 1996, the position of Chief Information Officer (CIO) was created for 22 named executive-branch agencies, including the NRC. The NRC has determined that the NRC's CIO is a "covered" official for purposes of the Act. Therefore, the NRC is adding the NRC's CIO to its list of "covered officials".

FOR FURTHER INFORMATION CONTACT:

Pamela Urban, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-1619.

Dated at Rockville, Maryland, this 11th day of February, 1997.

For the Nuclear Regulatory Commission.
John C. Hoyle,
Secretary of the Commission.

[FR Doc. 97-4057 Filed 2-18-97; 8:45 am]

BILLING CODE 7590-01-P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on March 5, 1997, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would

constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, March 5, 1997—2:00 p.m. until 4:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Date: February 12, 1997.
Sam Duraiswamy,
Chief, Nuclear Reactors Branch.
[FR Doc. 97-4056 Filed 2-18-97; 8:45 am]
BILLING CODE 7590-01-P

Sunshine Act Meeting

DATE: Weeks of February 17, 24, March 3, and 10, 1997.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 17

Tuesday, February 18

1:00 p.m.

Briefing on BPR Project on
Redesigned Materials Licensing
Process (Public Meeting)
(Contact: Don Cool, 301-415-7197)

2:30 p.m.

Briefing on Analysis of Quantifying
Plant Watch List Indicators (Arthur
Andersen Study) (Public Meeting)
(Contact: Rick Barrett, 301-415-7482)

4:00 p.m.

Discussion of Interagency Issues
(Closed—Ex. 9)

Wednesday, February 19

2:00 p.m.

Briefing on Millstone and Marine
Yankee Lessons Learned (Public
Meeting)
(Contact: Steve Stein, 301-415-1296)

3:30 p.m.

Affirmation Session (Public Meeting)
(if needed)

Thursday, February 20

2:00 p.m.

Briefing on EEO Program (Public
Meeting)
(Contact: Ed Tucker, 301-415-7382)

Week of February 24—Tentative

Wednesday, February 26

11:30 a.m.

Affirmation Session (Public Meeting)
(if needed)

Week of March 3—Tentative

There are no meetings scheduled for
the Week of March 3.

Week of March 10—Tentative

Monday, March 10—Tentative

2:30 p.m.

Briefing on Implementation of
Maintenance Rule, Revised
Regulatory Guide, and
Consequences (Public Meeting)

Thursday, March 13—Tentative

11:30 p.m.

Affirmation Session (Public Meeting)
(if needed)

The schedule for Commission
Meetings is subject to change on short
notice. To verify the status of meetings
call (recording)—(301) 415-1292.
Contact person for more information:
Bill Hill (301) 415-1661.

* * * * *

ADDITIONAL INFORMATION:

By a vote of 5-0 on February 11, the
Commission determined pursuant to
U.S.C. 552b(e) and 10 CFR Sec. 9.107(a)
of the Commission's rules that "Meeting

with Republic of Korea National
Assembly Delegation (Closed—Ex. 9)"
be held on February 11, and on less than
one week's notice to the public.

By a vote of 4-0 on February 13, the
Commission determined pursuant to
U.S.C. 552b(e) and 10 CFR Sec. 9.107(a)
of the Commission's rules that
"Affirmation of Louisiana Energy
Services (Claiborne Enrichment Center);
Atomic Safety and Licensing Board
Partial Initial Decision (Resolving
Contentions J, K, and Q), LBP-96-25"
be held on February 13, and on less than
one week's notice to the public.

* * * * *

The NRC Commission Meeting
Schedule can be found on the Internet
at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to
several hundred subscribers; if you no
longer wish to receive it, or would like
to be added to it, please contact the
Office of the Secretary, Attn: Operations
Branch, Washington, D.C. 20555 (301-
415-1661).

In addition, distribution of this
meeting notice over the internet system
is available. If you are interested in
receiving this Commission meeting
schedule electronically, please send an
electronic message to wmh.@nrc.gov or
dkw@nrc.gov.

* * * * *

Dated: February 14, 1997.
William M. Hill, Jr.,
SECY Tracking Officer, Office of the
Secretary.

[FR Doc. 97-4218 Filed 2-14-97; 2:05 pm]

BILLING CODE 7590-01-M

PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES

Meeting

AGENCY: Presidential Advisory
Committee on Gulf War Veterans'
Illnesses.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the
Federal Advisory Committee Act, this
notice is hereby given to announce an
open meeting of the Presidential
Advisory Committee on Gulf War
Veterans' Illnesses.

DATES: March 18, 1997, 8:30 a.m.-3:30
p.m.

PLACE: Wyndham Hotel, 215 W. South
Temple, Salt Lake City, UT 84101.

SUPPLEMENTARY INFORMATION: The
President established the Presidential
Advisory Committee on Gulf War
Veterans' Illnesses by Executive Order

12961, May 26, 1995, and extended its
tenure by Executive Order 13034,
January 30, 1997. The purpose of this
committee is to review and provide
recommendations on the government's
investigation of possible chemical and
biological weapons exposure incidents
during the Gulf War and on
implementation of the Committee's
prior recommendations. The committee
reports to the President through the
Secretary of Defense, and Secretary of
Health and Human Services, and the
Secretary of Veterans Affairs. The
committee members have expertise
relevant to the functions of the
committee and are appointed by the
President from non-Federal sectors.

Tentative Agenda*Tuesday, March 18, 1997*

8:30 a.m. Call to order and opening
remarks
8:35 a.m. Committee and staff
discussion of charge
8:50 a.m. Public comment
10:00 a.m. Break
10:15 a.m. Committee and staff
discussion: Implementation plan for
Final Report recommendations
10:30 a.m. Briefings: Overview of
ongoing and new DOD activities
11:10 a.m. Briefings: Status of DOD's
chemical and biological warfare
agent case investigations
11:50 a.m. Briefings: Activities related
to Khamisiyah
12:30 p.m. Lunch
1:30 p.m. Briefings: Activities related to
Khamisiyah (cont.)
3:15 p.m. Committee and staff
discussion: Next steps
3:30 p.m. Meeting adjourned
A final agenda will be available at the
meeting.

Public Participation

The meeting is open to the public.
Members of the public who wish to
make oral statements should contact the
Advisory Committee at the address or
telephone number listed below at least
five business days prior to the meeting.
Reasonable provisions will be made to
include on the agenda presentations
from individuals who have not yet had
an opportunity to address the Advisory
Committee. Priority will be given to
Gulf War veterans whose accounts of
firsthand experience with chemical and
biological warfare agent detections
previously have not been conveyed to
the Committee. The Advisory
Committee Chair is empowered to
conduct the meeting in a fashion that
will facilitate the orderly conduct of
business. People who wish to file
written statements with the Advisory
Committee may do so at any time.

FOR FURTHER INFORMATION CONTACT:

Michael E. Kowalok, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, NW., suite 1000, Washington, DC 20005, Telephone: (202) 761-0066, Fax: (202) 761-0310.

Dated: February 13, 1997.

C.A. Bock,

Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.

[FR Doc. 97-4043 Filed 2-18-97; 8:45 am]

BILLING CODE 3610-76-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22507; 812-10334]

WEBS Index Fund, Inc., et al; Notice of Application

February 12, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption Under the Investment Company Act of 1940 ("Act").

APPLICANTS: WEBS Index Fund, Inc. (the "Fund")¹ and Barclays Global Fund Advisors (the "Adviser")².

RELEVANT ACT SECTIONS: Order requested under section 17(d) of the Act and rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the series of the fund to pool some or all of their uninvested cash balances and the cash collateral they receive in connection with securities lending activities ("Cash Collateral") in one or more joint accounts ("Joint Accounts") that invest in certain short-term high quality debt securities ("Short-Term Investments")

FILING DATES: The application was filed on September 13, 1996, and amended on December 27, 1996. Applicants have agreed to file an additional amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on March 10, 1997 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: WEBS Index Fund, Inc., c/o PFPC, Inc., 400 Bellevue Parkway, Wilmington, Delaware 19809; BZW Barclays Global Fund Advisors, 45 Fremont Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT:

Courtney S. Thornton, Senior Counsel, at (202) 942-0583, or Mary Kay Ferch, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representatives

1. The Fund, a Maryland corporation, is an open-end management investment company that currently offers seventeen series (the "Series").³ The Adviser provides investment advisory services for all of the Series.

2. The investment objective of each of the Series is to provide investment results that correspond generally to the aggregate price and yield performance of publicly traded securities in particular markets, as represented by foreign equity securities indexes compiled by Morgan Stanley Capital International (each, an "MSCI Index"). Each Series seeks to remain fully invested in a pool of equity securities the performance of which approximates that of the relevant MSCI Index. In addition, each Series may lend its portfolio securities to approved brokers, dealers, and other financial institutions. The Custodian serves as the lending agent of the Fund and, in that capacity, will share with the respective Series any net income earned

³ Shares of the Series ("World Equity Benchmark Shares" or "WEBS") are issued only in large aggregations of WEBS known as "Creation Units." WEBS are neither offered nor redeemed by the Series in less than Creation Unit aggregations, but WEBS may be bought or sold in smaller aggregations in the secondary market on the American Stock Exchange, where WEBS are listed and traded. Additional Series are expected to be added from time to time, and would be subject to the requested order.

on invested Cash Collateral in the proportion agreed between the Custodian and the Series from time to time.⁴

3. Subject to guidelines adopted by the board of directors of the Fund (the "Board") and such additional limits as may be established by the Adviser, each Series may invest uncommitted cash balances and Cash Collateral temporarily in the following Short-Term Investments: (a) Obligations of the U.S. Government and its agencies and instrumentalities; (b) commercial paper rated Prime-1 by Moody's Investors Services, Inc. or A-1 by Standard & Poor's Corporation ("Commercial Paper"); (c) bank certificates of deposit and bankers' acceptances; (d) repurchase agreements collateralized by the foregoing securities;⁵ (e) participation interests in such securities; and (f) shares of unaffiliated money market funds (subject to applicable limits under the Act). The maximum possible maturity of each type of Short-Term Investment (other than shares of money market funds) will be 397 calendar days.

4. Applicants believe that the separate purchase of Short-Term Investments by each Series could result in certain inefficiencies, a limitation on the return that the Series could otherwise achieve, and increased costs. Accordingly, applicants propose to deposit the Series' available cash balances in Joint Accounts and to invest the daily balance of the Joint Accounts in Short-Term Investments. Applicants also propose to deposit the Series' Cash Collateral in a separate Joint Account for investment in Short-Term Investments selected by the Adviser. The sole purpose of these Joint Accounts would be to provide a convenient means of aggregating what otherwise would be daily transactions for some or all of the Series to manage their daily account balances.

5. The Adviser will not participate monetarily in the Joint Accounts, nor will it receive an additional fee for the administration of the Accounts. The Adviser will be responsible for directing the investment of funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with established procedures, and ensuring the fair treatment of each Series. The

⁴ The Custodian is not an affiliated person of either the Fund or the Adviser.

⁵ The Series will engage in hold-in-custody repurchase agreements (i.e., repurchase agreements where the counterpart or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only when cash is received very late in the business day and otherwise would be unavailable for investment.

¹ The Fund changed its name from foreign Fund, Inc. on January 2, 1997.

² The Adviser changed its name from BZW Barclays Global Fund Advisors on October 15, 1996.

Adviser will manage investments made with the proceeds of the Joint Accounts in essentially the same manner as if it had made such investments on an individual basis for each Series.

6. All purchases through the Joint Accounts will be subject to the same systems and standards for acquiring investments as are applicable to the individual Series. In addition, all purchases through the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral received in connection with securities lending activities.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 thereunder prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating as a principal in any joint enterprise or arrangement in which such investment company is a participant. Each Series may be deemed an affiliated person of each other Series under the definition set forth in section 2(a)(3) of the Act. Each Series, by participating in the proposed Joint Accounts, and the Adviser, by managing the proposed Joint Accounts, could be deemed to be joint participants in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be joint arrangements within the meaning of rule 17d-1.

2. Applicants assert that the proposed method of operating the Joint Accounts would not result in any conflicts of interest among any of the Series, or between a Series and the Adviser. Each Series would participate in the Joint Accounts on the same basis as every other Series that participates therein and in conformity with its investment objective and fundamental policies and restrictions. Applicants also have determined that the operation of the Joint Accounts would be free of any inherent bias favoring one Series over another and should eliminate bias due to size or lack thereof in any Short-Term Investment transaction, and that the anticipated benefits flowing to each Series would fall within an acceptable range of fairness.

3. Applicants argue that, although the Adviser and the Custodian would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Series and their shareholders, because the Joint Accounts would provide a more efficient and productive way of administering their daily investment

transactions. Specifically, applicants believe that the proposed Joint Accounts would have the following benefits for the Series: (a) The Series collectively would save fees and expenses by reducing the number of transactions relative to the number of transactions in which they would engage individually; (b) the Series may earn a higher rate of return on Short-Term Investments through the Joint Accounts relative to the returns they could earn individually; (c) the Series may realize certain administrative efficiencies and a reduction of the potential for errors by reducing the number of trade tickets and cash wires that must be processed by the sellers of Short-Term Investments, the Custodian, and the Adviser's trading departments; (d) by participating in larger repurchase agreements, the Series may benefit from an institution's willingness to increase the amount covered by such agreement near the end of the day; and (e) the Series may be able to invest in a greater variety of instruments and thereby obtain more favorable yield as market conditions change.

4. For the reasons set forth above, applicants believe that granting the requested order would be consistent with the provisions, policies, and purposes of the Act, and that the Series' participation in the proposed Joint Accounts would not be on a basis different from or less advantageous than that of any other participant therein. Accordingly, applicants submit that the proposed transactions meet the criteria for issuance of an order under section 17(d) and rule 17d-1 thereunder.

Applicants' Conditions

Applicants agree that any order issued by the SEC will be subject to the following conditions:

1. The Joint Accounts will be established on behalf of the Series with the Custodian as one or more separate cash accounts into which the Series may deposit daily all or a portion of their uninvested cash balances and Cash Collateral. The Joint Accounts will not be distinguishable from any other accounts maintained by a Series with the Custodian except that monies from the various Series will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have any separate existence with indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient and productive way of aggregating individual transactions that would otherwise require daily management and investment by each Series of its uninvested cash balances and Cash Collateral.

2. Cash and Cash Collateral in the Joint Accounts will be invested in one or more of the following Short-Term Investments, as determined by the Adviser: (a) Obligations of the U.S. Government and its agencies and instrumentalities; (b) Commercial Paper; (c) bank certificates of deposit and bankers' acceptances; (d) repurchase agreements "collateralized fully" (as that term is defined in rule 2a-7 under the Act) by the foregoing securities; (e) participation interests in such securities; and (f) shares of money market funds that are not affiliated persons of applicants (subject to applicable limits under the Act).

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

4. In order to ensure that there will be no opportunity for one Series to use any part of the balance of the Joint Accounts credited to another Series, no Series will be allowed to create a negative balance in any of the Joint Accounts for any reason, although each Series will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Series' decision to invest through the Joint Accounts will be solely at the option of the Series and the Adviser, and no Series will be obligated to invest through, or to maintain any minimum balance in, any of the Joint Accounts. In addition, each Series will retain the sole rights of ownership over any of its assets invested in the Joint Accounts, including interest payable on such assets.

5. Each Series will participate in the income earned or accrued in each Joint Account in which it is invested, including all investments held by such Joint Account, on the basis of the percentage of the total amount in such Joint Account on any day represented by its share of such Joint Account.

6. The Adviser will (a) administer, manage and invest, or cause any investment of, the uninvested cash balances, and (b) direct, supervise, and monitor the investment of Cash Collateral, in the Joint Accounts in accordance with and as part of its duties under the existing or any future investment advisory contracts with the Fund, and will not collect any additional or separate fee for the administration of the Joint Accounts.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g-1 thereunder.

8. The Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonable

designed to provide that the requirements of the application will be met. In addition, the Board will evaluate each Joint Account arrangement annually and will authorize continued participation in such Joint Account only if it determines that there is a reasonable likelihood that such continued participation will benefit each Series and its shareholders.

9. Each Series' investment in a Joint Account will be documented daily on the books of the Series and the books of the Custodian.

10. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity unless: (a) The Adviser believes that the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of the Series because of a credit downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. The Adviser may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Series prior to maturity of the investment if the cost of such transactions will be borne solely by the selling Series, and the transaction will not adversely affect the other Series. Each Series will be deemed to have consented to such sale and partition of the investments in the Joint Account.

11. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days will be considered illiquid and subject to the restriction that the Series may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its assets in illiquid securities, if the Series cannot sell its fractional interest in the investment in such Joint Account pursuant to the requirements described in the preceding condition.

12. All joint repurchase transactions will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with other existing and future positions taken by the SEC or its staff by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

13. Any investment made through a Joint Account will satisfy the investment policies or criteria of all Series participating in that investment.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4047 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act; Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [62 FR 6288, February 11, 1997].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: February 11, 1997.

CHANGE IN THE MEETING: Deletion/Rescheduling.

The following item, scheduled for consideration on Friday, February 14, 1997, has been rescheduled for consideration on Tuesday, February 18, 1997, following the open meeting, at 10:00 a.m.:

Regulatory matter bearing enforcement implications.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

Dated: February 14, 1997.

Jonathan G. Katz,
Secretary.

[FR Doc. 97-4242 Filed 2-14-97; 3:46 pm]

BILLING CODE 8010-01-M

[Release No. 34-38266; File No. SR-Amex-97-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-Lot Orders

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on February 10, 1997, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission publishing this notice to solicit comments on the proposed rule change from interested persons and to grant

accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for three months its existing pilot program under Amex Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charge.²

The text of the proposed rule change is available for 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved, on a pilot basis extending to February 10, 1997, amendments to Amex Rule 205 to require execution of odd-lot market orders at the Amex quote with no odd-lot differential charged.³ The procedures were not initially approved by the Commission in 1989⁴ and were most recently extended in December 1996.⁵

² The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on February 10, 1997, to continue with interruption.

³ Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR-Amex-96-47).

⁴ Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23).

⁵ Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR-Amex-96-47). Prior to that release, the Commission had extended this pilot program thirteen times. See Securities Exchange Act Release Nos. 37462 (July 19, 1996), 61 FR 39170 (approving File No. SR-Amex-96-25); 36821 (Feb. 8, 1996), 61 FR 6050 (approving File No. SR-Amex-96-06); 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR-Amex-95-03); 34949 (Nov. 8, 1994), 59 FR 58863 (approving File No. SR-Amex-94-47); 34496 (Aug.

Continued

¹ 15 U.S.C. 78s(b)(1).

In approving prior extensions to the Exchange's odd-lot pilot program, the Commission has expressed interest in the feasibility of the Exchange utilizing the Intermarket Trading System ("ITS") best bid or offer, rather than the Amex bid or offer, for purposes of the Exchange's odd-lot pricing system. In File No. SR-Amex-95-03, requesting a further extension of the pilot program, the Exchange stated that it had determined to proceed with systems modifications to provide for execution of odd-lot market orders at the ITS best bid or offer.⁶

The Commission has approved amendments to Amex Rule 205 to accommodate the prospective modifications to the Exchange's odd-lot pricing system.⁷ Specifically, amended Amex Rule 205 would provide that odd-lot market orders to buy or sell would be filled at the "adjusted ITS offer" or "adjusted ITS bid," respectively, which would be defined in Amex Rule 205, Commentary .04, as the lowest offer and highest bid disseminated by the Amex or by another ITS participant market.⁸ Where quotation information is not available (e.g., when quotation collection of dissemination facilities are inoperable) odd-lot market orders would be executed at the prevailing Amex bid or offer, or at a price deemed appropriate under prevailing market conditions. These procedures also will apply to odd-lot limit orders that were immediately executable based on the Amex quote at the time the order is received at the trading post or through Post Execution Reporting ("PER") system.

8, 1994), 59 FR 41807 (approving File No. SR-Amex-94-28); 33584 (Feb. 7, 1994), 59 FR 6983 (Approving File No. SR-Amex-93-45); 32726 (Aug. 9, 1993), 58 FR 43394 (approving File No. SR-Amex-93-24); 31828 (Feb. 5, 1993), 59 FR 8434 (approving File No. SR-Amex-93-06); 30305 (Jan. 20, 1992), 57 FR 4653 (approving File No. SR-Amex-92-04); 29922 (Nov. 8, 1991), 56 FR 58409 (approving File No. SR-Amex-91-30); 29186 (May 19, 1991), 56 FR 22488 (approving File No. SR-Amex-91-09); 28758 (Jan. 10, 1991), 56 FR 1656 (approving File No. SR-Amex-90-39; and 27590 (Jan. 5, 1990), 55 FR 1123 (approving File No. SR-Amex-89-31).

⁶ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (approving File No. SR-Amex-95-03).

⁷ See Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR-Amex-95-24).

⁸ In order to protect against the inclusion of incorrect or stale quotations when determining the highest bid and lowest offer, Amex Rule 205, Commentary .04, contains seven criteria that must be met before a quotation in a stock from another ITS market center will be considered. If the ITS quotation fails to meet one of the specified criteria, the best bid or offer disseminated by the Exchange will be used. See Securities Exchange Act Release No. 36181 (Sept. 1, 1995), 60 FR 47194 (approving File No. SR-Amex-95-24).

As the Exchange noted in SR-Amex-95-24, it will implement these amendments upon completion of the necessary systems enhancements by the Exchange and the Securities Information Automation Corporation ("SIAC"). Upon implementation of the amended rule, the Exchange will notify the Commission, as well as Exchange members and member organizations. In order to provide the additional time necessary to implement these systems enhancements, the Exchange proposes to extend the existing pilot program procedures under Amex Rule 205 for three months.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁹ of the Act in general and furthers the objectives of Section 6(b)(5)¹⁰ and Section 11A(a)(1)¹¹ in particular in that it is designed to facilitate the economically efficient execution of odd-lot transactions and to improve the execution of customers' orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW.,

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78k-1(a)(1).

Washington, DC 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-97-08 and should be submitted by March 12, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the Exchange's proposal to extend its pilot program concerning the execution of odd-lot orders through May 12, 1997, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) and Section 11A(a)(1) of the Act¹² because the Exchange's proposed pricing procedures are designed to facilitate transactions in odd-lot orders, to help ensure the economically efficient execution of these transactions, and, in general, to protect investors and the public interest. The Commission further believes the revised procedures should provide investors with more timely executions of their odd-lot orders and should produce execution prices that more accurately reflect market conditions than would otherwise be the case under the pre-pilot pricing procedures.¹³

Nevertheless, the Commission is concerned that the Exchange has been unable to implement the new odd-lot pricing procedures as planned. Under the current pilot pricing procedures, which only use the Amex quote in establishing the execution price, some odd-lot orders may not be receiving the best available price.¹⁴ Therefore, the Commission expects the Exchange to complete the systems modifications upon which implementation of the new odd-lot pricing procedures depend before the May 12, 1997 deadline.¹⁵ To ensure that the Commission is adequately informed of the Exchange's

¹² 15 U.S.C. 78f(b)(5) and 78k-1(a)(1).

¹³ Prior to the 1989 pilot program, odd-lot market orders were routed to a specialist and held in accumulation in the PER system or by the specialist until a round-lot execution in that security took place on the Exchange. Subsequent to the round-lot execution, the odd-lot order received the same price as the last Exchange round-lot transaction, plus or minus an odd-lot dealer differential. See Securities Exchange Act Release No. 26445 (Jan. 10, 1989), 54 FR 2248 (approving File No. SR-Amex-88-23).

¹⁴ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430 (noting that the Exchange's current pricing formula does not include quotations from other markets).

¹⁵ As noted above, the new procedures provide for odd-lot market orders to be filled at the "adjusted ITS best bid or offer."

progress towards such completion, the Commission again requests that the Exchange provide the Commission with a status report regarding this project on the first day of every month until the necessary system modifications are completed. Finally, upon completion of the systems modifications, the Exchange should give advance notice to the Commission of the date when the new odd-lot pricing procedures are to be implemented.¹⁶

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. This will permit the pilot program to continue on an uninterrupted basis while the Amex works to implement the new procedures. In addition, the procedures the Exchange proposes to continue using are identical to the procedures that were published previously in the Federal Register for the full comment period and were approved by the Commission.¹⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-Amex-97-08) is approved on a pilot basis for a three-month period ending on May 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4051 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38274; International Series Release No. 1051; File No. SR-CBOE-97-04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Adoption of Foreign Examination Modules

February 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ notice is hereby given that on

January 24, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE or Exchange") filed with Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as a noncontroversial rule change pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e)(6) of Rule 19b-4. 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 CBOE proposes to adopt certain foreign examination modules for the United Kingdom ("U.K."), Canada and Japan, which would reduce duplicative qualification standards. The exams were developed by the New York Stock Exchange ("NYSE") and currently are in use by the NYSE and National Association of Securities Dealers ("NASD"). Exchange Rule 9.3 has certain requirements for registered representatives, one of which is passing various tests. The Exchange previously has recognized the requirement that all registered representative pass the Series 7 examination. The CBOE now is expanding the types of exams that may satisfy the Series 7 requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt foreign examination modules for the U.K., Canada and Japan. Exchange Rule 9.3 has certain requirements for registered representatives, one of which is passing various tests. The Exchange previously has recognized the requirement that all registered representatives pass the Series 7 examination. The CBOE now is expanding the types of exams that may satisfy the Series 7 requirement.

These foreign examination modules allow persons in good standing with the securities regulators of their respective countries to qualify as general securities registered representatives (Series 7 registrants) by successfully completing certain modified general securities representative examinations which have been developed by the NYSE.²

The purpose of the proposal is to reduce duplicative qualification standards that foreign registered representatives from the U.K., Canada and Japan encounter to qualify as a U.S. general securities registered representative, the equivalent of the Series 7 registration. A person who qualifies through one of these examinations may perform all of the functions permitted of a person who holds a Series 7 registration, with the exception of selling municipal securities. The examination modules for the U.K. (Series 17), Canada (Series 37/38) and Japan (Series 47) currently are in use by the NYSE and NASD.³ At the present time, the CBOE has no rule which allows CBOE registration of a person who has passed the Series 17, Series 37/38 or series 47 versions of the modified general securities representative examinations.

The CBOE wishes to give U.K., Canadian, and Japanese registered representatives the same advantage they have at the NYSE and NASD by eliminating duplicative examinations. the CBOE believes that these examinations will benefit both the Exchange and the foreign representative affected by the proposal.

The Series 17 version, the Limited Registered Representative Examination,

² See Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (May 8, 1990) (approving File No. SR-NYSE-89-22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, *corrected*, Securities Exchange Act Release No. 36629A, International Series Release No. 909A (Jan. 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR-NYSE-95-29, Series 37 and Series 38); Securities Exchange Act Release No. 36708, International Series Release No. 915 (Jan. 11, 1996), 61 FR 1808 (Jan. 23, 1996) (approving File No. SR-NYSE-95-36, Series 47).

³ See Securities Exchange Act Release No. 27967 (May 1, 1990), 55 FR 19131 (May 8, 1990) (approving File No. SR-NYSE-89-22, Series 17); Securities Exchange Act Release No. 36629, International Series Release No. 909 (Dec. 21, 1995), 60 FR 67385, *corrected*, Securities Exchange Act Release No. 36629A, International Series Release No. 909A (Jan. 4, 1996), 61 FR 744 (Jan. 10, 1996) (approving File No. SR-NYSE-95-29, Series 37 and Series 38); Securities Exchange Act Release No. 36708, International Series Release No. 915 (Jan. 11, 1996), 61 FR 1808 (Jan. 23, 1996) (approving File No. SR-NYSE-95-36, Series 47); *see also* Securities Exchange Act Release No. 36825 (Feb. 9, 1996), 61 FR 6052 (approving File No. SR-NASD-96-04, Series 37 and 38); Securities Exchange Act Release No. 37112 (April 12, 1996), 61 FR 17339 (approving File No. SR-NASD-96-13).

¹⁶ The Commission expects the Amex to implement the new odd-lot pricing procedures no later than the May 12, 1997 expiration of this pilot extension.

¹⁷ See Securities Exchange Act Release No. 35344 (Feb. 8, 1995), 60 FR 8430; Securities Exchange Act Release No. 36821 (Feb. 8, 1996), 61 FR 6050; Securities Exchange Act Release No. 37462 (July 19, 1996), 61 FR 39170; and Securities Exchange Act Release No. 38024 (Dec. 6, 1996), 61 FR 65623 (approving File No. SR-Amex-96-47).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 C.F.R. 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

is for U.K. registrants who have successfully completed the basic exam of the U.K. and who are in good standing with The Securities Association ("TSA").⁴ Essentially, the modified Series 7 Examination deletes those substantive sections of the Standard Series 7 which overlap with the TSA examination. The Series 17 is a ninety (90) question examination dealing with U.S. securities laws, regulations, sales practices and special products drawn from the standard Series 7 Examination.

The Series 37 version is for Canadian registrants who have successfully completed the basic core module of the Canadian Securities Institute program. The Series 38 version is for Canadian registrants who, in addition to having successfully completed the basic core module of the Canadian Securities Institute program, have also successfully completed the Canadian option and futures program. Both the Series 37 and 38 share topics and test questions with the parent Series 7 program but cover only subject matter that is not covered, or not covered in sufficient detail, on the Canadian qualification examination. The Series 37 has 90 questions and is 150 minutes in duration, while the Series 38, an abbreviated version of the series 37, has only 45 questions and is 75 minutes in duration. Forty-five questions pertaining to options from the series 37 were omitted from the Series 38.

To become registered with the Exchange, qualified Japanese registered representatives in good standing with the Japanese securities authorities would be required to obtain a passing score on the Series 37. As a subset of the Series 7, this 160 question and 240 minute long module is designed to test a Japanese registered representative's knowledge of U.S. securities law, markets investment products, and sales practices.

The statutory basis for these foreign examination modules lies in Section 6(c)(3)(B) of the Act. Under that section, it is the Exchange's responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the Exchange has adopted examinations that are administered to establish that persons associated with Exchange members and member organizations have attained

specified levels of competence and knowledge.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for thirty days from January 24, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of this Act⁵ and Rule 19b-4(e)(6)⁶ thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 12, 1997.

For the Commission by the Division of market Regulation pursuant to the delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4048 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38271; File No. SR-DTC-96-23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Relating to Revision of Fees

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 31, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change revises the fees charged to users who are not DTC participants for automated reports listing the positions of DTC participants in an issue.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by DTC.

⁴ TSA is a U.K. self-regulatory organization which regulates members of the U.K. exchanges and broker-dealer firms, and has rule making authority granted to it by the Securities and Investment Board.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(e)(6).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the fees charged to users who are not DTC participants for automated reports listing the positions of DTC participants in an issue. The automated reports include the Weekly Report Series, which shows the daily closing balances during the week for each participant having a security credited to its DTC account; the Monthly Report Series, which shows the closing balance on the last business day of the month for each participant having a security credited to its DTC account; the Dividend Record Date Series, a quarterly report which shows the closing balance for each participant having a security credited to its DTC account; on a dividend record date; and the Special Request, which is available for any business day and shows each participant's closing balance in the issue on that day. DTC offers these reports to third parties (e.g., trustees, issuers, attorneys representing issuers, and other attorneys when required by valid legal process) who are not participants at DTC. The revised fees for the automated reports became effective on January 1, 1997.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act³ and the rules and regulations thereunder because it provides for the equitable allocation of reasonable dues, fees, and other charges among users of DTC's services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)⁴ of the Act and pursuant to Rule 19b-4(e)(2)⁵ promulgated

thereunder in that the proposed rule change establishes or changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-96-23 and should be submitted by March 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4052 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38278; File No. SR-DTC-96-25]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Amendment to DTC's By-Laws

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 31, 1996, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's by-laws to authorize DTC's Board of Directors to modify its internal management structure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend DTC's by-laws to authorize DTC's Board of Directors to modify its internal management structure. In particular, DTC proposes to amend Article III of its by-laws to authorize DTC's Board of Directors to designate any one or more of DTC's Vice Presidents as Senior Vice President. This is in addition to the Board of Directors' current authority to designate any one or more of DTC's Vice Presidents as Executive Vice President or Senior Executive Vice President and to designate a Senior Executive Vice President as DTC's Chief Operating Officer.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act³ and the rules and regulations thereunder because it makes administrative changes to DTC's by-laws so that they coincide with DTC's new internal management structure.

² The Commission has modified the text of the summaries prepared by DTC.

³ 15 U.S.C. 78q-1.

³ 15 U.S.C. 78q-1.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(e)(2).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)⁴ of the Act and pursuant to Rule 19b-4(e)(3)⁵ promulgated thereunder in that the proposed rule change is concerned solely with the administration of DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR-DTC-96-25 and should be submitted by March 12, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 97-4053 Filed 2-18-97; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-38267; File No. SR-NYSE-96-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Execution of Odd-Lot Orders

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 25, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Exchange Rule 124 with respect to the manner in which odd-lot market orders are priced for execution when quotation information in a stock is not available.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, odd-lot market orders are executed in the odd-lot system against the specialist in that stock at a price based on the "best pricing quote." This

is either the NYSE quote or the best quote from another ITS market center. (A buy odd-lot market order is executed at the offer price, and a sell odd-lot market order is executed at the bid price.) However, in situations where the quote for a stock does not qualify as a valid quote, either because it is designated as a non-firm quote, or it fails a system validation check because it exceeds certain parameters, the current procedure prices odd-lot executions using the last sale price in the round lot market.² The Exchange believes, however, that this may not reflect the current market for the stock, since the quote condition (*i.e.* either non-firm or a gapped quote) suggests strongly that the market is likely to move away from that last price. In these situations, the Exchange believes the current procedure may disadvantage customers or the specialist.

The NYSE proposes that, when odd-lot market orders are entered in a situation where a quote is not available, designated non-firm, or where the spread in a quote or the difference between the quote and the last round lot sale exceeds odd-lot system validation guidelines,³ that the next sale or next valid quote on the NYSE be used to price odd-lot market orders, rather than the last sale price. If the next quote is not firm, the next sale would be used to execute quote priced market orders. The Exchange believes this would provide more appropriate pricing of odd-lot orders as it would reflect actual round-lot market prices at the time the odd-lot orders are executed. The Exchange further believes investors and specialists would benefit from this increased pricing accuracy.

2. Statutory Basis

The Exchange believes the proposed rule change is designed to provide more efficient executions of standard off-lot market orders. In addition, the Exchange

² See NYSE Rule 124.60 (detailing the circumstances when the ITS best bid or offer will not be utilized).

³ These uncodified guidelines currently provide for the following valid spread ranges:

Common stock: for prices less than or equal to \$50, the valid spread is 1 point; for prices between \$50 ¹/₆₄ and \$100, the valid spread is 1 ³/₄ points; for prices greater than \$100, the valid spread is 2 ¹/₂ points.

Preferred stock: for prices less than or equal to \$50, the valid spread is 2 points; for prices between 50 ¹/₆₄ and 100, the valid spread is 2 ¹/₄ points; for prices greater than \$100, the valid spread is 2 ¹/₂ points.

Spread between quote and last sale must not exceed: prices less than or equal to \$10, the valid spread is 3/8 point; prices between 10 ¹/₆₄ and \$25, the valid spread is ¹/₂ point; prices between 25 ¹/₆₄ and \$40, the valid spread is ⁵/₈ point; prices greater than \$40, the valid spread is 2 ¹/₂ points.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(e)(3).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

believes implementation of the proposed pricing procedures is consistent with the provisions of Section 6(b) (5) of the Act which, among other things, requires that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.⁴

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-96-33 and should be submitted by March 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-4050 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38273; File No. SR-PSE-96-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Thereto by the Pacific Stock Exchange Incorporated Relating to the Exchange's Lead Market Maker Options Book Pilot Program

February 12, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder² notice is hereby given that on December 10, 1996, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed an amendment to the proposed rule change on February 4, 1997.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to modify its Lead Market Maker ("LMM") Book Pilot Program under which PSE LMMs may assume operational responsibility for the options public limit order book ("Book") in certain option issues. The Exchange is proposing to expand the scope of the program to allow for more LMMs to participate, and to allow a

greater number of option issues to be eligible under the Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1996, the Commission approved and Exchange proposal to adopt a one-year pilot program under which some LMMs are permitted to manage the Book function in certain designated issues.⁴ Under the pilot, the approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.⁵ The program allows LMMs to have greater control over their operations on the Exchange floor by allowing them, among other things, to set their own rates for execution services provided to customers.

Under the pilot as approved by the Commission, the program is limited to no more than three LMMs and no more than forty option symbols in total,⁶

⁴ See Securities Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 ("Pilot Approval Order").

⁵ More specifically, under the rule changes approved by the Commission, LMMs may perform all functions of the Order Book Official ("OBO") in designated issues pursuant to rules 6.51 through 6.59. In that regard, the Exchange will allow the LMM to utilize Exchange personnel to assist the LMM in performing the OBO function, and the Exchange will charge the LMM a reasonable fee for such use of Exchange personnel. If the program is made permanent, LMMs would be responsible for hiring and maintaining their own employees, but the Exchange would provide employees to assist LMMs when necessary due to market conditions. In all cases, however, employees working in the Book operation will be subject to all rules, policies, and procedures established by the Exchange. With regard to their duties as market makers, LMMs would be required to perform all obligations provided in Rules 6.35 through 6.40 and 6.82.

⁶ Each option issue typically has only one symbol associated with it, unless LEAPs are traded on that issue, in which case there usually would be two additional symbols related to the issue, or unless a contract adjustment is necessary due, for example,

Continued

⁴ 15 U.S.C. 78f(b)(5).

⁵ 17 C.F.R. 200.30-3(a) (12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The PSE filed an amendment ("Amendment No. 1") clarifying the maximum number of Lead Market Makers and options symbols that would participate in the expanded Lead Market Maker Book Pilot Program. See Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, dated February 3, 1997.

during a one-year pilot phase. However, the Exchange is now proposing a modest expansion of the pilot program to allow for up to nine LMMs and up to 150 options symbols.⁷

The LMMs who participate during the pilot phase are selected by the Options Floor Trading Committee based on certain designated factors.⁸ Approved LMMs must maintain "minimum net capital," as provided in Rule 15c3-1 under the Act,⁹ and also must maintain a cash or liquid asset position of at least \$500,000, plus \$25,000 for each issue over five issues for which they perform the function of an OBO. Only multiply-traded option issues are eligible during the pilot phase.

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory 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.

to a merger or stock split, in which case one additional symbol usually would be added.

⁷ Amendment No. 1, *supra* note 3.

⁸ See Pilot Approval Order, *supra* note 4.

⁹ 17 CFR 240.15c3-1.

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 above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PSE-96-45 and should be submitted by March 12, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4049 Filed 2-18-97; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 21, 1997.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202-205-6629.

SUPPLEMENTARY INFORMATION:

Title: "Supplemental Guaranty Agreement, Preferred Lenders Program".

Type of Request: Extension of a Currently Approved Collections.

¹⁰ 17 CFR 200.30-3(a)(12)

Form No.: SBA Form 1347.

Description of Respondents: SBA Preferred Lenders.

Annual Responses: 200.

Annual Burden: 300.

Comments: Send all comments regarding this information collection to Michael J. Dowd, Director, Office of Loan Programs, Small Business Administration, 409 3rd Street, S.W., Suite 8300 Washington, D.C. 20416. Phone No.: 202-205-6570.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Semiannual Report on Representatives and Compensation Paid for Services in Connection with Obtaining Federal Contracts".

Type of Request: Extension of Currently Approved Collections.

Form No.: SBA Form 1790.

Description of Respondents: 8(a) Program Participants.

Annual Responses: 9,000.

Annual Burden: 9,000.

Comments: Send all comments regarding this information collection to William Fisher, Deputy Associate Administrator, Minority Enterprise Development, Small Business Administration, 409 3rd Street, S.W., Suite 7150 Washington, D.C. 20416. Phone No. 202-205-6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: February 12, 1997.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97-4023 Filed 2-18-97; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2924; Amendment #2]

Idaho; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated January 31, 1997, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on November 16, 1996 and continuing through January 3, 1997.

All other information remains the same, i.e., the termination date for filing applications for physical damage is

March 5, 1997, and for loans for economic injury the deadline is October 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97-4025 Filed 2-18-97; 8:45 am]

BILLING CODE 8025-01-P

[Declaration of Disaster Loan Area #2930]

Wisconsin (And Contiguous Counties in Illinois); Declaration of Disaster Loan Area

Green County and the contiguous counties of Dane, Iowa, Lafayette, and Rock in Wisconsin, and Stephenson and Winnebago Counties in Illinois constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on July 17 and 18, 1996. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 11, 1997 and for economic injury until the close of business on November 10, 1997 at the address listed below:

U.S. Small Business Administration,
Disaster Area 2 Office, One Baltimore
Place, Suite 300, Atlanta, GA 30308

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.875
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 293006 for Wisconsin and 293106 for Illinois. For economic injury the numbers are 937600 for Wisconsin and 937700 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 10, 1997.

Philip Lader,
Administrator.

[FR Doc. 97-4024 Filed 2-18-97; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Lambert-St. Louis International Airport, St. Louis, Missouri; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program (NCP) update submitted by the city of St. Louis Airport Authority (STLAA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On July 15, 1996, the FAA determined that the Noise Exposure Maps (NEM) submitted by STLAA under part 150 were in compliance with applicable requirements. On January 10, 1997, the Associate Administrator for Airports approved the Lambert-St. Louis International Airport Noise Compatibility Program. All measures in the NCP are approved with the exception of a portion of one measure related to height hazard zoning, which is not within the purview of part 150, and another measure which is a flight procedure that does not have to be acted on within the 180-day formal review period. An FAA determination on this flight procedure is anticipated within about 30 days.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lambert-St. Louis International Airport Noise Compatibility Program is January 10, 1997.

FOR FURTHER INFORMATION CONTACT: Moira D. Keane, ACE-615B, Federal Aviation Administration, Airports Division, 601 E. 12th St., Kansas City, Missouri 64106. Telephone No. (816) 426-4731. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise

Compatibility Program for the Lambert-St. Louis International Airport, effective January 10, 1997.

Under Section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a Noise Exposure Map submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing

action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

In May 1996, the STLAA submitted to the FAA the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study. The Lambert-St. Louis International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on July 15, 1996. Notice of this determination was published in the Federal Register on July 31, 1996.

The Lambert-St. Louis International Airport study contains a proposed update to its Noise Compatibility Program comprised of actions designed for phased implementation by airport management from the date of study completion to beyond the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on July 15, 1996, and was required by a provision in the Act to approve or disapprove the program within 180 days. Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained numerous proposed actions for noise abatement and mitigation on and off the airport, which were contained in the technical report entitled "FAR Part 150 Noise Compatibility Program Update." The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator effective January 10, 1997.

Outright approval was granted for all measures in the NCP, with the exception of a portion of one measure related to height hazard zoning, which is not within the purview of part 150, and another measure which is a flight procedure that does not have to be acted on within the 180-day formal review

period. An FAA determination on this flight procedure is anticipated within about 30 days.

Some of the approved noise abatement measures include: continued informal noise abatement procedures and implementation of additional enhanced noise control procedures; completion of ongoing acquisition of homes in Kinloch, East Kinloch, Southeast and Southwest Berkley, Ramona Hills, Bridgeton, Bridgeton Terrace, McNulty Manor, and Robertson; development of a sound insulation and sales (transaction) assistance program; and an automated aircraft monitoring system to assist the Airport in tracking the progress of the noise control procedures.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator on January 10, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the Lambert-St Louis Airport Planning and Development Office, 4610 N. Lindbergh, Bridgeton, Missouri. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Kansas City, Missouri, on February 5, 1997.

George A. Hendon,
Manager, Airports Division.

[FR Doc. 97-4066 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-97-9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or

omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition document number involved and must be received on or before March 11, 1997.

ADDRESSES: Send comments to any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed with the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267-3939 or Angela Anderson (202) 267-9681 Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 12, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 010NM

Petitioner: Boeing Commercial Airplane Group

Sections of the FAR Affected: 14 CFR 25.809(f)

Description of Relief Sought: To provide an increased level of safety by permitting the use of an inertia reel for each of the seven crew-member occupants in addition to an escape rope at the crew entry door of the 757-200PF airplanes. A separate inertia reel and harness will be provided for each of the seven crew-member occupants.

Docket No.: 137CE

Petitioner: Air Tractor, Inc.

Sections of the FAR Affected: 14 CFR 23.3

Description of Relief Sought: To permit the AT-10, a freight carrying aircraft, to exceed the 12,500 pound limitation for a normal category aircraft.

Docket No.: 28774

Petitioner: Mid-East Jet, Inc.

Sections of the FAR Affected: 14 CFR 61.67(c)(2)(iii)(B)(4)(ii) and (d)(2)(i)(B), 61.68(d)(2)(ii)(C)(2) and (e)(2)(i)(B), and 61.158(d)(1)

Description of Relief Sought: To allow Mid East Jet, Inc. to use Federal Aviation Administration (FAA)-approved Boeing Company (Boeing) simulators for 100 percent of its pilot training, testing, and checking while using Boeing's approved 14 CFR part 121 flight training program.

Dispositions of Petitions

Docket No.: 20583

Petitioner: Tenneco, Inc.

Sections of the FAR Affected: 14 CFR 61.57 (c)(3) and (d)(2), and 61.58(e)

Description of Relief Sought/

Disposition: To permit pilots employed by Tenneco, Inc. to complete their entire 24-month pilot-in-command (PIC) check in an FAA-approved flight simulator.

Grant, January 28, 1997, Exemption No. 6572

Docket No.: 25052

Petitioner: Taquan Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.203(a)(1)

Description of Relief Sought Disposition: To permit Ketchikan Air Service, Inc., TEMSCO Helicopters, Inc./TEMSCO Airlines, Taquan Air Service, Inc., and Misty Fjords Air and Outfitting, conducting operations under part 135, to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual flight Rules (SVFR) below 500 feet above the surface.

Grant, January 24, 1997, Exemption No. 4760E

Docket No.: 25731

Petitioner: Experimental Aircraft Association

Sections of the FAR Affected: 14 CFR 45.25 and 45.29

Description of Relief Sought/

Disposition: To allow members of the Experimental Aircraft Association and members of the Confederate Air Force to operate their historic military aircraft with 2-inch high nationality and registration marks located beneath the aircraft's horizontal stabilizer.

Grant, December 11, 1996, Exemption No. 5019D

Docket No.: 26340

Petitioner: Delta Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.440(a), and 121.441(a)(1) and (b)(1); appendix F to part 121; and Special Federal Aviation Regulation (SFAR) No. 58, paragraph 6(b)(3)(ii)(A)

Description of Relief Sought/

Disposition: To allow Delta Air Lines,

Inc. to combine recurrent flight and ground training and proficiency checks for its crewmembers in a single annual training and proficiency evaluation session, and to meet the line check requirements through an alternative line check program.

Grant, January 27, 1997, Exemption No. 5271E

Docket No.: 26559

Petitioner: Helicopter Association International

Sections of the FAR Affected: 14 CFR 43.3(a)

Description of Relief Sought/

Disposition: To permit properly trained pilots employed by member operators of Helicopter Association International and the Association of Air Medical Services to remove and reinstall liquid oxygen containers in their aircraft after receiving appropriate training by a properly certified airframe mechanic.

Grant, December 26, 1996, Exemption No. 6002A

Docket No.: 26732

Petitioner: Air Transport Association of America

Sections of the FAR Affected: 14 CFR 121.652 (a) and (c)

Description of Relief Sought/

Disposition: To allow Air Transport Association of America (ATA)—member airlines and other similarly situated part 121 operators to permit a pilot-in-command (PIC) conducting operations under part 121 to perform an instrument approach procedure to the weather minima prescribed by this exemption during the first 100 hours of service as a PIC, in the type airplane he or she is operating, using an alternative means approved by the Administrator to satisfy the requirements.

Grant, January 27, 1997, Exemption No. 5549C

Docket No.: 27852

Petitioner: Higher Power Aviation, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(3); 61.56(h) (1), (2), and (3); 61.57(c)(3) and (d)(2), 61.58(e); 61.64(e)(3); 61.65 (e)(2), and (g) (1) and (3); 61.67 (c)(4) and (d)(2); 61.158(d)(1); 61.191(d); and 61.197(e)

Description of Relief Sought/

Disposition: To permit the petitioner to use Federal Aviation Administration (FAA)—approved simulators to meet certain flight experience requirements.

Grant, January 29, 1997, Exemption No. 5986A

Docket No.: 27867

Petitioner: Department of the Navy

Sections of the FAR Affected: 14 CFR 91.209 (a) and (b)

Description of Relief Sought/

Disposition: To permit the Navy, specifically the United States Marine Corps, to conduct helicopter night-vision flight device training operations without lighted aircraft position lights.

Grant, January 24, 1997, Exemption No. 5978B

Docket No.: 27933

Petitioner: Emery Worldwide Airlines

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F to part 121

Description of Relief Sought/

Disposition: To allow the petitioner to combine recurrent flight and ground training and proficiency checks for its flight crewmembers in a single annual training and proficiency evaluation program.

Grant, January 31, 1997, Exemption No. 6000A

Docket No.: 28599

Petitioner: James C. Fisher

Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought/

Disposition: To allow the petitioner to act as pilot in command under 14 CFR part 121 after his 60th birthday.

Denial, January 27, 1997, Exemption No. 6574

Docket No.: 28723

Petitioner: Ryan International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 91.203 (a) and (b)

Description of Relief Sought/

Disposition: To permit the petitioner to operate temporarily its U.S.-registered aircraft following the incidental loss or mutilation of that aircraft's airworthiness certificate or registration certificate, or both.

Grant, January 24, 1997, Exemption No. 6571

Docket No.: 28749

Petitioner: GTA Air, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2)

Description of Relief Sought/

Disposition: To allow the petitioner to operate aircraft under part 135 without a TSO-C112 (Mode S) transponder installed.

Grant, January 27, 1997, Exemption No. 6573

Docket No.: 27885

Petitioner: Trans World Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441 (a)(1) and (b)(1), and appendix F to part 14 CFR part 121

Description of Relief Sought/

Disposition: To allow the petitioner to combine recurrent flight and ground training and proficiency checks for its

flight crewmembers in a single annual training and proficiency evaluation program.

Grant, January 31, 1997, Exemption No. 6012A

[FR Doc. 97-4064 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. M-028]

Application of Foreign Underwriters to Write Marine Hull Insurance

The Maritime Administration (MARAD) has received an application under 46 CFR part 249 from HIH Casualty and General Insurance Limited, an Australia based underwriter, to write marine hull insurance on subsidized and Title XI program vessels.

In accordance with 46 CFR 249.7(b), interested persons are hereby afforded an opportunity to bring to MARAD's attention any discriminatory laws or practices relating to the placement of marine hull insurance which may exist in the applicant's country of domicile.

Responses to this notice must be sent to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20509, and must be received by close of business on Wednesday, March 5, 1997.

Dated: February 13, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97-4062 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-81-P

National Highway Traffic Safety Administration

[Docket No. 96-133, Notice 01]

Development of Improved Driver Interview Procedures for Police Use at Checkpoints

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice and Request for Comments on Data Collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) plays a key role in the national effort to reduce alcohol related traffic injuries and deaths. One way the enforcement community has tried to combat this problem is by conducting sobriety checkpoints; however, there is evidence that many of the impaired drivers passing through these checkpoints are not detected by police. One component

of this study is the observation by researchers of customary police interviewing practices at sobriety checkpoints. Behaviors and cues of interviewed drivers will be linked to their breath alcohol levels to develop more effective screening procedures. Breath samples will be obtained only from drivers who volunteer to participate in this study. Current data on the best ways to improve driver interviews by police at checkpoints do not exist. NHTSA invites the general public and other Federal agencies to comment on the proposed data collection as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATE: Written comments must be submitted on or before April 21, 1997.

ADDRESSES: Direct all written comments to NHTSA, Docket Section, Room 5111, Docket #96-133, Notice 01, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Marvin M. Levy, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS-31), Washington, DC 20590, Phone Number (202) 366-5597.

SUPPLEMENTARY INFORMATION:

I. Abstract

Alcohol related traffic fatalities rose to 17,274 in 1995, 41 percent of all traffic fatalities for the year. NHTSA is committed to the development of effective programs to reduce the number of deaths and injuries related to alcohol-impaired driving. Among the law enforcement activities aimed at reducing drunk driving, sobriety checkpoints can act both as a specific deterrent, by apprehending impaired drivers passing through the checkpoint, and a general deterrent, by encouraging motorists not to drive after drinking. The success of sobriety checkpoints as a deterrent depends to a large extent on the perception of drivers that they will be caught if they have been drinking. However, past research suggests that many impaired drivers are not being detected by police at checkpoints. If drivers conclude that they may not be detected, then the effectiveness of this enforcement approach may decline. There is some evidence that police interview procedures can be improved, for impaired drivers who are stopped and still seated in their vehicle, when police use a procedure employing eye gaze nystagmus. Other cues or combination of cues may also result in improved detection rates.

The objective of this study is to develop and test an improved set of checkpoint interview procedures that

police may use to detect more effectively drivers who are at illegal blood alcohol concentrations [BACs].

II. Method of Data Collection

Data will be collected voluntarily at two separate sites in cooperating police jurisdictions during regularly scheduled checkpoint operations. To examine the effectiveness of cues and procedures that officers can use to detect drivers at illegal BACs, researchers will accompany officers while they are conducting routine driver interviews. Researchers will observe what the police do, by listening to the kinds of questions they ask and what motorists say in response to police inquiries, and how the drivers behave. Also, drivers will be observed for visual and other cues or signs indicative of alcohol consumption. For those drivers who have been permitted to proceed, a researcher, located downstream of the interviewing officer, will ask the driver to consent to blow into a device that measures the driver's breath alcohol. Each motorist will be assured of confidentiality. No identifiers, such as names, addresses, or license plate numbers, will be obtained regardless of whether or not the motorist agrees to cooperate. Also, no information about the results from breath alcohol testing will be provided to the police. No survey questions will be asked of drivers. The researchers will be using portable non-evidentiary quality "screening devices" to measure BAC. In the event that a driver who may be at an illegal BAC is identified, he or she will be informed of the BAC findings and provided with suggested remedies such as having a sober passenger drive, or taking a cab provided by the researchers.

III. Use of the Findings

The findings from researcher observations of checkpoint operations will help determine whether further development of an improved battery of police interview procedures is warranted. If the results are positive, a field test will be conducted as part of this study to determine whether the new procedures are an improvement over those customarily used by police to detect drivers at illegal BACs. Should the findings from the field test be successful, a police training package, containing the improved procedures, will be developed and disseminated to police agencies.

Improved interview procedures will help police officers at checkpoints make more accurate decisions regarding which drivers should or should not be detained for further sobriety testing.

This should increase the efficiency of checkpoint operations. Such improvements should also heighten the public's perception of being apprehended for drunk driving at sobriety checkpoints.

IV. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Drivers who are stopped at two sobriety checkpoint operations in one community and who are asked to voluntarily provide an alcohol breath sample.

Estimated Number of Respondents: 1,500 drivers.

Estimated Time per Respondent: One minute per respondent.

Estimated Total Annual Burden: 25 hours.

Estimated Cost per Respondent: \$33.75.

V. Request for Comments

Comments are invited on: (a) The need for the proposed collection and the uses of the data to meet the objectives of the study; (b) the information that should be obtained from observations of the drivers and officers; (c) ways to enhance the quality, utility and clarity of the information collected;

(d) the accuracy of the burden estimate, and (e) ways to minimize the burden of the collection of the information on the respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection. Copies of all comments will be placed in Docket 96-133, Notice 1, in the NHTSA Docket Section in Room 5109, 400 Seventh Street SW Washington D.C. 20590 and will become a matter of public record.

James H. Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97-4059 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-59-P

Discretionary Cooperative Agreements to Support the Air Bag Safety Campaign

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreements to support the Air Bag Safety Campaign.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of FY 1997 discretionary cooperative agreements to

support the Air Bag Safety Campaign. The goal of this campaign is to inform the public about how to maximize the lifesaving capabilities of air bags while minimizing the risks and to increase the proper use of safety belts and child safety seats. NHTSA solicits applications from national nonprofit organizations, having regional, state or local chapters, for projects under this program.

DATES: Applications must be received on or before March 21, 1997.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Georgeanne Moses, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH-97-H-05090, and identify the priority program area which the application is submitted. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT:

General administrative questions may be directed to Mark Kromer, Office of Contracts and Procurement, at (202) 366-9571. Programmatic questions relating to this cooperative agreement program should be directed to Ms. Cheryl Neverman, National Outreach Division, NHTSA, Room 5130 (NTS-22), 400 7th Street, S.W., Washington, D.C., 20590 (202) 366-2696.

SUPPLEMENTARY INFORMATION:

Background

Air bags, when combined with the use of a lap and shoulder belt, offer the most effective combination of protection to adults. More than 1700 lives have been saved by air bags since the mid-1980's. As of July 1996, about 56 million passenger cars and light trucks were equipped with air bags. In five years, more than 50 percent of the U.S. light vehicle fleet, 125 million vehicles, will have air bags. Beginning with model year 1998 for passenger cars and model year 1999 for light trucks, new vehicles will be required to have driver and passenger side air bags and safety belts. As vehicle fleets are being manufactured and sold with both driver and passenger side air bags, concerns have arisen about the dangers of air bags, particularly to children age 12 and under. Some infants, children and small stature adults have been injured or killed in traffic crashes by deploying air bags. In almost all cases to date, the occupants who died were unrestrained, incorrectly restrained, or positioned too close to the

air bag. Since many people do not understand how air bags work, they fail to fully appreciate the threat air bags may pose to some passengers.

Out of concern for the public's safety and the need to educate the public about the lifesaving benefits of air bags, a public and private partnership of automotive manufacturers, insurance companies, occupant restraint manufacturers, government agencies, health professionals, and child health and safety organizations was created to lead a national campaign—the Air Bag Safety Campaign. The privately funded Air Bag Safety Campaign, started in June 1996, is a two-year intensive education campaign whose goal is to inform the public about how to maximize the lifesaving capabilities of air bags, while minimizing the risks and to increase the proper use of safety belts and child safety seats. The campaign takes a three-pronged approach in conveying its messages to the American public:

1. **Public Education:** Development of an intense media campaign to get the "safety belt/air bag/kids-in-back" message out to the public. The group urges people to convey to their friends and neighbors the importance that children ride in proper places and with proper restraints in vehicles.

2. **Legislation:** The campaign supports states in upgrading safety belt and child safety seat laws in order to increase safety restraint use nationwide. Currently, 11 states have "primary" enforcement laws, that allow police to stop and ticket motorists who fail to wear safety belts. Belt use in these states is much higher than in "secondary" law states where police must ticket a motorist for another violation before issuing a safety belt citation.

3. **Enforcement:** The campaign supports high visibility enforcement of safety belt and child safety seat laws. This type of enforcement has proven very effective in increasing safety restraint use and reducing crash-related injuries and fatalities.

The campaign is basing its activities, in part, on experience over the past decade. This experience has shown that a combination of intensive public education, well-written legislation, and high visibility, statewide enforcement of laws will result in an immediate and substantial increase in public awareness and occupant protection use. Increased safety belt and correct child safety seat use will significantly reduce the number of children and adults who are injured during air bag deployments.

Current issues and concerns for the Air Bag Safety Campaign can be summarized as follows:

—Approximately 67% of motorists currently use safety belts. From 1982 through 1994, an estimated 65,290 lives were saved by safety belts and more than 1.5 million moderate to critical injuries were prevented. If all passenger vehicle occupants over age 4 had worn safety belts, an additional 9,500 lives could have been saved in 1994. NHTSA's Fatal Accident Reporting System (FARS) data indicate that 40% of the children under age 5 who died in fatal motor vehicle crashes were unrestrained.

—During pre-crash braking, an unrestrained occupant may be thrown against the dashboard or steering wheel in the immediate proximity of an air bag. Air bags inflate in less than 1/25th of a second—faster than a blink of an eye. The air bag's blast of energy can severely injure or kill small children and drivers who are too close to the air bag during inflation.

—Although vehicle and child safety seat manufacturers warn against placing a rear-facing child safety seat on the front seat of a vehicle with a passenger side air bag, at least 9 children have been killed as a result of deploying air bags.

—As of January, 1997, NHTSA has identified 35 crashes where the deployment of the passenger side air bag resulted in fatal head or neck injuries to a child. Of these deaths, 9 were infants in rear-facing child seats. At the time of these crashes, almost all the other fatally-injured children were unrestrained or improperly restrained.

—Safety belts and child safety seats have proven to be very effective at reducing fatalities and serious injuries as a result of motor vehicle crashes. Research has shown that when correctly used, child safety seats can reduce fatalities among children less than 5 years of age by 71 percent. As a result, child safety seats are one of the most effective automotive safety innovations ever developed. This message must be communicated to the American public.

Since 1981, NHTSA has worked with opinion leaders, such as physicians, nurses, law enforcement officers, educators, employers and civic groups, who have motivated people through interpersonal contacts. One of the most effective means of educating the public about the lifesaving benefits of occupant protection has been through groups that have strong national, State and local affiliates (i.e., the American Academy of Pediatrics, the Emergency Nurses Association of the PTA).

Implementation of statewide programs, including education about the importance of occupant protection in crash survival and support for

enforcement of safety belt and child safety seat use laws, relies heavily on the outreach efforts of organizations like these.

Objectives

To help achieve the goals set by the Air Bag Safety Campaign, NHTSA seeks to establish cooperative efforts between NHTSA and qualified national organizations to educate their members and their customers on the issues related to air bag safety and proper safety belt and safety seat use. Despite the apparently high rate of child safety seat use, many of these seats are being misused and underused. Use of child safety seats drops off dramatically after age one. Due to incorrect use and nonuse, child safety seats are not saving as many lives and preventing as many injuries as they should. The objectives of this cooperative agreement program are to gain further child injury/fatality reductions by increasing overall use of child passenger protection systems, increasing correct use of child safety seats, alerting the public to the risk of unbuckled or incorrectly buckled occupants (especially children) caused by deploying air bags and enhancing enforcement of child passenger safety laws. The goal is not to duplicate the efforts of the Air Bag Safety Campaign, but to give national organizations an opportunity to participate in short-term activities to support efforts at the national level. Specific objectives for this cooperative agreement program will complement two of the Campaign's approaches: Public Education and Legislation.

1. Public education approach: The Air Bag Safety Campaign will create a national focus on education and enforcement. The campaign will build and coordinate partnerships with law enforcement, government agencies, health and safety organizations, corporations and community groups. The intense, ongoing activity of the campaign will peak each year with a focused effort to educate and mobilize the nation. Outreach activities by public safety officials would include safety checkpoints in every state in the Spring of each year. State and local law enforcement agencies, with the support of governors, mayors and communities, will conduct these safety checkpoints—not to give tickets in most cases, but to give drivers the information they need to keep themselves and their families safe within their motor vehicles. Other ongoing activities—announcements in schools and churches, tray liners in fast food restaurants, materials in physicians' offices, corporate outreach to employees and customers will

complement this public safety education and enforcement effort. A strategy of the public education approach is to get as much media coverage as possible. Involving key elected officials when conducting major events and activities will get the media to cover the issue and provide the information to a greater number of people.

2. Legislation approach: The campaign's network of businesses, corporations, associations, churches, law enforcement, schools, and children's advocacy groups will support state and local efforts to upgrade occupant protection laws and provide for primary enforcement of safety belt laws. Other upgrades could include closing gaps in child protection laws and providing for driver license demerit points and higher fines. Nine states have been identified by the Legislative Coordinating Council of the Air Bag Safety Campaign for funding campaigns to upgrade their occupant protection laws. The Council proposes funding for 9 priority states: Arizona, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, Ohio and Oklahoma. The specific approach will be decided on a state-by-state basis. The level of assistance, where and how it is applied, leadership responsibility, and the structure of the state coalitions will be designed to fit specific state conditions.

Specific Agreement Objective: The applicant shall choose to conduct a project complementing either or both of the approaches. The applicant shall draw on the above ideas and develop a proposal to extent the campaign to its members and to its members' customers. A proposal including a legislative project shall describe the planned approach in the 9 targeted states and any other states, and identify strategies to achieve the legislative proposal.

NHTSA Involvement

The National Highway Traffic Safety Administration (NHTSA), Office of Communications and Outreach, National Organization's Division (NOD), will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement and to coordinate activities between the organizations and the NOD and TSP;

2. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison to the Air Bag Safety Campaign and with other government and private agencies as appropriate; and

4. Stimulate the exchange of ideas and information among cooperative agreement recipients through periodic meetings.

Period of Support

Cooperative agreements may be awarded for a period of (1) year. The application for the funding period (12 months) should address what is proposed and can be accomplished during that period.

Anticipated funding level for six FY 1997 projects will be \$40,000 each, totaling \$240,000. Federal funds should be viewed as seed money to assist organizations in the development of traffic safety initiatives. Monies allocated for cooperative agreements are not intended to cover all of the costs that will be incurred in the process of completing the projects. Applicants should demonstrate a commitment of financial or in-kind resources to support the proposed projects.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement program, a national nonprofit organization must meet the following requirements:

—have an established membership structure with regional, state or local chapters throughout the country having a mechanism for disseminating and coordinating project efforts at the local level.

—have in place a schedule of regular/ National/regional or state conferences or conventions, and one or more communication mechanisms that can be used for motivating members and other constituents to become involved in occupant protection at the State and local levels.

Application Procedure

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD-30), ATTN: Georgeanne Moses, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. Applications are due no later than 30 days after the appearance of this announcement in the Federal Register. Only complete application packages received by the due date shall be considered. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No.

DTNH22-97-H-05090. The Applicant shall specifically identify any information in the application for which confidentiality is requested, in accordance with the procedures of 49 CFR Part 512, Confidential Business Information.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4-88, including 424A and 425B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424-A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. Also included shall be a program narrative statement which addresses the following:

1. A description of the project to be pursued which addresses:
 - a. A summary describing the organizational membership, customers and purpose;
 - b. an explanation demonstrating the need for assistance;
 - c. the goals, objectives, and the anticipated results and benefits of the project (supporting documentation from concerned interests other than the applicant can be used.)
 - d. the method or methods that will be used;
 - e. identify the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results.
 - e. any relevant data based on planning studies should be included or footnoted.
 - f. describe any unusual features, such as design or technological innovations, reductions in cost or time, or extraordinary social/community involvement;

2. Provide quantitative projections of the accomplishments to be achieved, if possible, or list the activities in chronological order to show the schedule or accomplishments and their target dates.

3. The proposed program director and other key personnel identified for participation in the proposed project effort, including a description of their qualifications, the nature of their

contribution, and their respective organizational responsibilities.

4. A description of the applicant's previous experience or on-going program(s) that is (are) related to this proposed program effort.

5. A detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

6. A statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed project.

Review Process and Criteria

Initially, all applications will be reviewed to confirm that they contain all of the information required by the Applications Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated and ranked using the following criteria:

1. Technical Approach to Achieving Project Objectives

The reasonableness, completeness, clarity and feasibility of the proposer's approach to achieving the objectives of this demonstration and evaluation project. This involves a comprehensive understanding of the issues associated with child occupant protection, such as proper safety belt and child safety seat use, and the lifesaving capabilities of air bags, a detailing of project objectives, and an identification and selection of potential obstacles, problems and critical political issues related to successful completion of the project. The applicant's understanding of the purpose and unique problems represented by the Campaign objectives of this cooperative agreement program as evidenced in the description of its proposed project planning, implementation, and evaluation effort. The technical of the proposed effort, including the feasibility of the approach, practicality, planned methodology, anticipate results. The likelihood that the proposed effort will make a significant contribution to the number of people made aware of the lifesaving benefits of automatic crash protection and increase the number of people properly using safety belts and child safety seats.

2. Qualifications of Project Personnel and Facilities

The adequacy of the qualifications and experience of the professional team, the various disciplines represented, and the relative level of effort proposed for

professional, technical, contractual, and support staff. The expertise, both general and project related, education level, and availability of key project professional and technical personnel as evidenced by resumes and descriptions of past experience provided. Demonstrated evidence of specialized qualifications including knowledge of the proper use of safety belts and child safety seats. Key personnel include the project director, statistician, programmer, research assistants, and consultants. The adequacy of the facilities, equipment, and other resources identified to accomplish the proposed effort.

3. Project Planning and Scheduling

The completeness and realism of the proposer's plan for accomplishing the demonstration and evaluation within the guidelines and timeframe established in the notice. Another reasonable timeframe may be acceptable to the Government, but it must be justified. Realistic project components or milestones should be in evidence in the schedule.

4. Conformance with Methodological and Funding Guidelines

The demonstration of ability and intent to meet the basic guidelines and restrictions detailed in the notice in the conduct of the project. If certain guidelines cannot be met, reasonable justifications are given. Financial merit will be estimated by the cost to be borne by NHTSA and the in-kind contribution provided by the applicant as compared to the anticipated benefits.

Terms and Conditions of Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)

2. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A-122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR Part 29. Each agreement with a non-profit organization or an educational institution shall also be subject to the general administrative requirements of 49 CFR Part 19.

Reporting Requirements

1. The recipient shall submit quarterly reports documenting project efforts to

date, suitable for public dissemination, within 15 days after the end of each quarter, and a final report summarizing the project effort by completion of the project. An original and three copies of each of these reports shall be submitted to the COTR.

2. The recipient may be requested to conduct an oral presentation of project activities for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Communications and Outreach, Washington, D.C. An original and three copies of briefing materials shall be submitted to the COTR.

Dated: February 13, 1997.

James H. Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97-4063 Filed 2-18-97; 8:45 am]

BILLING CODE 4910-59-M

Surface Transportation Board

[STB Docket No. AB-167 (Sub-No. 1176X)]

Consolidated Rail Corporation; Abandonment Exemption; in Wicomico County, MD

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 10903 the abandonment by Consolidated Rail Corporation (Conrail) of: (1) The portion of its Mardella Industrial Track extending from milepost 40.80± to the junction with Conrail's Delmarva Secondary at milepost 42.00±, near Salisbury, MD; and (2) its Mill Street Industrial Track extending from the connection with the Mardella Industrial Track at milepost 0.00± to milepost 0.60±, near Salisbury, subject to standard labor protective conditions.

DATES: The exemption will be effective March 21, 1997 unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Statements of intent to file an OFA under 49 CFR 1152.27(b)(2) must be filed by March 3, 1997; petitions to stay must be filed by March 6, 1997; requests for a public use condition under 49 CFR 1152.28 and requests for a notice of interim trail use/rail banking under 49 CFR 1152.29 must be filed by March 11, 1997; and petitions to reopen must be filed by March 17, 1997.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Docket No. AB-167 (Sub-No. 1176X) must be filed with: Office of the Secretary, Case

Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423; a copy of all pleadings must be served on petitioner's representative: John J. Paylor, Associate General Counsel, Consolidated Rail Corporation, 2001 Market St.—16A, Philadelphia, PA 19101-1416.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: February 10, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97-4058 Filed 2-18-97; 8:45 am]

BILLING CODE 4915-00-P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Rodin and Michelangelo" (See list ¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Philadelphia Museum of Art from on or about March 30, 1997, through June 22, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

¹ A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619-5030, and the address in Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547-0001.

Dated: February 13, 1997.

Les Jin,

General Counsel.

[FR Doc. 97-4065 Filed 2-18-97; 8:45 am]

BILLING CODE 8230-01-M

Wednesday
February 19, 1997

Part II

**Environmental
Protection Agency**

40 CFR Part 268

**Land Disposal Restrictions: Correction of
Tables; Treatment Standards for
Hazardous Waste and Universal
Treatment Standards; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 268****[EPA #530-296-002; FRL-5681-4]****RIN 2050-AD38****Land Disposal Restrictions: Correction of Tables; Treatment Standards for Hazardous Wastes and Universal Treatment Standards****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Technical amendment of final rule.

SUMMARY: On April 8, 1996, EPA published Land Disposal Restrictions Phase III; Final Rule and Partial Withdrawal and Amendment of Final Rule, including the complete tables "Treatment Standards for Hazardous Wastes" at § 268.40, and "Universal Treatment Standards" at § 268.48. The Agency is today publishing updated and corrected versions of these two tables, incorporating all revisions to the treatment standards promulgated since the Phase III Final Rule. The updated tables also incorporate additional technical corrections which the Agency is making today, including the removal of treatment standards for the 25 waste codes whose listings were vacated by the November 1, 1996 court decision, *Dithiocarbamate Task Force v. Environmental Protection Agency* (DTC Court Case), *F.3d (D.C.Cir. November 1, 1996)*. These corrected tables will eliminate confusion as to what levels of treatment must be achieved by the regulated community as they comply with the LDR requirements.

EFFECTIVE DATE: This rule is effective on February 19, 1997.

ADDRESSES: 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 Docket Identification Number is F-96-PH3F-FFFFF. The RCRA Docket is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603-9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424-9346 (toll free) or (703) 920-9810 in the Washington, DC metropolitan area. For information on

this document contact Shaun McGarvey (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, (703) 308-8603.

SUPPLEMENTARY INFORMATION:**I. Reasons and Basis for Today's Amendment**

The Agency has received comments from the regulated community and State agencies pointing out mistakes in the "Treatment Standards for Hazardous Wastes" table at 40 CFR 268.40 and the "Universal Treatment Standards" table at 40 CFR 268.48, published in the April 8, 1996 Land Disposal Restrictions (LDR) Phase III Final Rule (61 FR 15566) that were not addressed by Phase III: Technical correction of final rule (June 28, 1996, 61 FR 33680). Today's amendment addresses these comments, makes further technical corrections where necessary, and incorporates all revisions and corrections made since the Phase III Final Rule into complete and updated versions of these tables.

Today's amendment corrects all the errors that are considered appropriate for correction without notice and comment. The Agency is aware of certain other issues or problems that may be addressed at a later time, with notice and comment as appropriate. An example is that the rules currently specify that compliance with LDR standards is to be measured using "grab samples" (see 40 CFR 268.40, the table "Treatment Standards for Hazardous Wastes", footnote 5). We note that some data used to develop standards for some of the constituents required for K061 were derived from composite samples from high temperature metal recovery (HTMR) facilities, and it would not be appropriate to require HTMR facilities to comply with the standards for those constituents using grab samples. We plan to correct this problem in the near future.

II. Incorporating Revisions Since the LDR Phase III Final Rule

The updated versions of the tables, "Treatment Standards for Hazardous Wastes" and "Universal Treatment Standards" incorporate the following revisions and corrections which have been promulgated since the Phase III Final Rule, the last time the complete tables were published in the Federal Register.

A. Partial Withdrawal of Phase III: April 8, 1996

The revisions of the standards for characteristic waste codes D001-D003 and D018-D043 that were promulgated in the Partial Withdrawal were superseded by the Phase III Technical

Correction. Therefore, the treatment standards for these waste codes as they appeared in the Partial Withdrawal do not appear in today's updated tables.

B. Phase III Technical Correction: June 28, 1996

This rule implemented the following changes to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- Removal of entries for codes which were considered for listing at one time but were never finalized: K140, P187, P193, P195, P200, U360-U363, U368-U371, U374, U380, U388, U397-U399, U405, U406, U408.

- Correct revision of standards for the following waste codes: D001, D002, D012-D043, F006, F007, F010, K008, K108, and P093.

Please note that revisions to the "Treatment Standards for Hazardous Wastes" table for the following waste codes were either partially incorrect or were superseded by the Carbamate Emergency Rule or the vacature of the hazardous waste listing due to the DTC Court Decision: D003, F037, F039, K006, K062, K108, K156-K161, P196, P202, P205, U277-U278, U365-U366, U375-U379, U381-U387, U389-U396, U400-U404, U407, U409-U411.

Also note that although footnotes 8 and 9 were added to the treatment standard table by the June 28 Technical correction, the position of footnote 9 in the table and the text of footnote 8 are being modified by today's rule, as described further below.

This rule also implemented the following changes to the "Universal Treatment Standards" table at § 268.48:

- Revision of standards for the following constituents: A2213, Butylate, EPTC, Molinate, Pebulate, Prosulfocarb, Triallate, and Vernolate. Note that the UTS standard for Cycloate was also revised, but this constituent was later removed from the UTS list due to the DTC Court Decision.

C. Emergency Revision of Carbamate Standards: August 26, 1996

This rule implemented the following changes to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- Revision of all carbamate waste codes except K156.

Please note that the treatment standard for K156 and the second date specified by footnote 10 in the Emergency Revision included errors which are corrected in today's rule.

The Emergency Revision also promulgated the following change to the "Universal Treatment Standards" table at § 268.48:

- Addition of footnote 6 to the Universal Treatment Standard table for

all carbamate constituents added to the UTS table by the Phase III rule.

III. New Technical Corrections to Treatment Standards for Hazardous Wastes and Universal Treatment Standards

The Agency is today promulgating the following technical corrections to the "Treatment Standards for Hazardous Wastes" table at § 268.40:

- On November 1, 1996, the DTC Court Decision vacated the listing of the following 25 waste codes: K160, U277, U365–U366, U375–U379, U381–U386, U390–U393, U396, U400–U403, U407. Therefore, since these wastes are no longer listed as hazardous, they are not subject to LDR prohibitions (assuming they do not exhibit a characteristic; if they do exhibit a characteristic, they would be covered under the prohibition for that characteristic). For this reason, EPA is removing the treatment standards for these waste codes from the treatment standard table.

- The text of footnote 9, "These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards," applies to all subcategories of wastes codes D001–D003 (except for radioactive high level D002), and D012–D043. Therefore, the position of all citations of footnote 9 in the table are being moved from the columns containing the treatment standards for wastewaters and nonwastewaters to the "Waste Code" column of the table. The text of footnote 8 is also being simplified to apply only to wastes managed in CWA or CWA-equivalent systems. Footnote 9 applies to all wastes for which footnote 8 applies; thus, it is no longer necessary for footnote 8 to apply to wastes managed in Class I SDWA wells.

- The standards for D003 now correctly reflect the preamble language from the Phase III final rule (61 FR at 15568–15569), which states that the requirement to meet § 268.48 standards does not apply to the reactive sulfides, unexploded ordnance, and reactive cyanides subcategories.

- For F037, the Phase III Technical Correction mistakenly reported the standard for Acenaphthene in nonwastewaters as 3.4 mg/l. This standard is now being corrected to read "NA".

- For F039, the Phase III Technical Correction mistakenly reported the standard for Acenaphthylene in nonwastewaters as "NA". This standard is now being corrected to read "3.4 mg/l".

- For K006, the Phase III Technical Correction mistakenly reported the

standard for Lead in nonwastewaters from the "hydrated" subcategory as "3.7 mg/l TCLP". This standard is now being corrected to read "NA".

- For K062, the Phase III Technical Correction mistakenly reported the standard for Nickel in nonwastewaters as "5.0 mg/l TCLP". This standard is now being corrected to read "NA".

- For K088, the Phase III Final Rule mistakenly omitted footnote 7 from the entries for "Cyanide (Total)" and "Cyanide (Amenable)" in the common name column. Footnote 7 is now being added to these entries.

- For U003, the alternate standard for Acetonitrile in nonwastewaters is now being corrected to read "38 mg/l".

- For U190, the additional language "(measured as Phthalic acid or Terephthalic acid)" is being added to the common name for Phthalic acid with CAS number 85–44–9.

- For F027 and F028, all numerical treatment standards for these codes in the Phase III Final Rule were incorrect. The standards for all constituents are now being corrected to the concentrations that appeared in the Phase II Final Rule.

- For U027, the treatment standard for bis(2-Chloroisopropyl)ether in wastewaters is being corrected to read "0.055 mg/l".

- For K156, the treatment standard for Acetonitrile (CAS 78–05–8) in nonwastewaters has been corrected to read "38 mg/l".

- Footnote 10 to the treatment standard table is today being corrected to read as follows: "Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters." This change corrects a minor discrepancy as to the dates during which the alternative treatment standards for carbamate wastes remain in effect.

The Agency is today promulgating the following technical corrections to the "Universal Treatment Standards" table at § 268.48:

- Cycloate and 3-Iodo-2-propynyl n-butylcarbamate were only regulated constituents for waste codes U386 and U375, respectively. Since the listing of

these two waste codes were vacated by the DTC court decision, the Agency is today removing these constituents from the Universal Treatment Standards table.

IV. Rationale for Immediate Effective Date

Today's amendment does not create any new regulatory requirements; rather, it restates and clarifies requirements already in effect by correcting a number of errors in the April 8, 1996 final rule and withdrawal notice, the June 28, 1996 technical correction, and the August 26, 1996 emergency revision of the carbamate standards. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 9903(b)(3), to provide for an immediate effective date. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to promulgate today's corrections in final form and that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

V. Analysis Under Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Under Executive Order 12866, this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose annual costs of \$100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform. Moreover, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

VI. Submission to Congress and the General Accounting Office

Because there is good cause to forego notice-and-comment procedures, the rule also may take effect upon promulgation without prior submission of the rule to the Congress. 5 U.S.C. section 808. EPA will thereafter submit the rule to Congress, as required by 5 U.S.C. 801(a).

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 13, 1997.

Elliott Laws,
Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter I of the Code

of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

2. Section 268.40 is amended by revising the table “Treatment Standards for Hazardous Wastes” to read as follows:

§ 268.40 Applicability of treatment standards.

*	*	*	*	*

BILLING CODE 6560-50-P

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
D001 ⁹	Ignitable Characteristic Wastes, except for the §261.21(a)(1) High TOC Subcategory.	NA	NA	DEACT and meet §268.48 standards ⁸ ; or RORGs; or CMBST	DEACT and meet §268.48 standards ⁸ ; or RORGs; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on 40 CFR 261.21(a)(1) - Greater than or equal to 10% total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGs; or CMBST
D002 ⁹	Corrosive Characteristic Wastes.	NA	NA	DEACT and meet §268.48 standards ⁸	DEACT and meet §268.48 standards ⁸
D002, D004, D005, D006, D007, D008, D009, D010, D011	Radioactive high level wastes generated during the reprocessing of fuel rods. (Note: This subcategory consists of nonwastewaters only.)	Corrosivity (pH)	NA	NA	HLVIT
		Arsenic	7440-38-2	NA	HLVIT
		Barium	7440-39-3	NA	HLVIT
		Cadmium	7440-43-9	NA	HLVIT
		Chromium (Total)	7440-47-3	NA	HLVIT
		Lead	7439-92-1	NA	HLVIT
		Mercury	7439-97-6	NA	HLVIT
		Selenium	7782-49-2	NA	HLVIT
		Silver	7440-22-4	NA	HLVIT
		NA	NA	DEACT	DEACT
D003 ⁹	Reactive Sulfides Subcategory based on 261.23(a)(5).	NA	NA	DEACT and meet §268.48 standards ⁸	DEACT and meet §268.48 standards ⁸
	Explosives Subcategory based on 261.23(a)(6), (7), and (8).	NA	NA	DEACT and meet §268.48 standards ⁸	DEACT and meet §268.48 standards ⁸

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable						
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS	
		Common Name	CAS ² Number			
	Unexploded ordnance and other explosive devices which have been the subject of an emergency response.	NA	NA	DEACT	DEACT	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
	Other Reactives Subcategory based on 261.23(a)(1).	NA	NA	DEACT and meet \$268.48 standards ⁸	DEACT and meet \$268.48 standards ⁸	
	Water Reactive Subcategory based on 261.23(a)(2), (3), and (4). (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet \$268.48 standards ⁸	
	Reactive Cyanides Subcategory based on 261.23(a)(5).	Cyanides (Total) ⁷	57-12-5	Reserved	590	
		Cyanides (Amenable) ⁷	57-12-5	0.86	30	
D004	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for arsenic based on the extraction procedure (EP) in SW846 Method 1310.	Arsenic	7440-38-2	5.0	5.0 mg/l EP	
		Arsenic; alternate ⁶ standard for nonwastewaters only.	7440-38-2	NA	5.0 mg/l TCLP	
D005	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for barium based on the extraction procedure (EP) in SW846 Method 1310.	Barium	7440-39-3	100	100 mg/l TCLP	
D006	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for cadmium based on the extraction procedure (EP) in SW846 Method 1310.	Cadmium	7440-43-9	1.0	1.0 mg/l TCLP	
	Cadmium Containing Batteries Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Cadmium	7440-43-9	NA	RTHRM	
D007	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for chromium based on the extraction procedure (EP) in SW846 Method 1310.	Chromium (Total)	7440-47-3	5.0	5.0 mg/l TCLP	
D008	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for lead based on the extraction procedure (EP) in SW846 Method 1310.	Lead	7439-92-1	5.0	5.0 mg/l EP	

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Lead; alternate ⁶ standard for nonwastewaters only	7439-92-1	NA	5.0 mg/l TCLP
	Lead Acid Batteries Subcategory (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80). This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	RLEAD
	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stabilization, nor do they include organo-lead materials that can be incinerated and stabilized as ash. This subcategory consists of nonwastewaters only.)	Lead	7439-92-1	NA	MACRO
D009	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that also contain organics and are not incinerator residues. (High Mercury-Organic Subcategory)	Mercury	7439-97-6	NA	IMERC; OR RMERC

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		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain greater than or equal to 260 mg/kg total mercury that are inorganic, including incinerator residues and residues from RMERC. (High Mercury-Inorganic Subcategory)	Mercury	7439-97-6	NA	RMERC
	Nonwastewaters that exhibit, or are expected to exhibit, the characteristic of toxicity for mercury based on the extraction procedure (EP) in SW846 Method 1310; and contain less than 260 mg/kg total mercury. (Low Mercury Subcategory)	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	All D009 wastewaters.	Mercury	7439-97-6	0.20	NA
	Elemental mercury contaminated with radioactive materials. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	AMLGM
	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory. (Note: This subcategory consists of nonwastewaters only.)	Mercury	7439-97-6	NA	IMERC
D010	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for selenium based on the extraction procedure (EP) in SW846 Method 1310.	Selenium	7782-49-2	1.0	5.7 mg/l TCLP
D011	Wastes that exhibit, or are expected to exhibit, the characteristic of toxicity for silver based on the extraction procedure (EP) in SW846 Method 1310.	Silver	7440-22-4	5.0	5.0 mg/l TCLP
D012 ⁹	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or CMBST	0.13 and meet §268.48 standards ⁸
		Endrin aldehyde	7421-93-4	BIODG; or CMBST	0.13 and meet §268.48 standards ⁸

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number		
D013 ⁹	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		beta-BHC	319-85-7	CARBN; or CMBST	0.066 and meet \$268.48 standards ⁸
		delta-BHC	319-86-8	CARBN; or CMBST	0.066 and meet \$268.48 standards ⁸
		gamma-BHC (Lindane)	58-89-9	CARBN; or CMBST	0.066 and meet \$268.48 standards ⁸
D014 ⁹	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or CMBST	0.18 and meet \$268.48 standards ⁸
D015 ⁹	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or CMBST	2.6 and meet \$268.48 standards ⁸
D016 ⁹	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or CMBST	10 and meet \$268.48 standards ⁸
D017 ⁹	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or CMBST	7.9 and meet \$268.48 standards ⁸
D018 ⁹	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311.	Benzene	71-43-2	0.14 and meet \$268.48 standards ⁸	10 and meet \$268.48 standards ⁸
D019 ⁹	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56-23-5	0.057 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
D020 ⁹	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet \$268.48 standards ⁸	0.26 and meet \$268.48 standards ⁸
D021 ⁹	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311.	Chlorobenzene	108-90-7	0.057 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D022 ⁹	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67-66-3	0.046 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D023 ⁹	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95-48-7	0.11 and meet \$268.48 standards ⁸	5.6 and meet \$268.48 standards ⁸
D024 ⁹	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet \$268.48 standards ⁸	5.6 and meet \$268.48 standards ⁸
D025 ⁹	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet \$268.48 standards ⁸	5.6 and meet \$268.48 standards ⁸
D026 ⁹	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid)(sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet \$268.48 standards ⁸	11.2 and meet \$268.48 standards ⁸
D027 ⁹	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D028 ⁹	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D029 ⁹	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸

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		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
D030 ⁹	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet \$268.48 standards ⁸	140 and meet \$268.48 standards ⁸
D031 ⁹	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet \$268.48 standards ⁸	0.066 and meet \$268.48 standards ⁸
		Heptachlor epoxide	1024-57-3	0.016 and meet \$268.48 standards ⁸	0.066 and meet \$268.48 standards ⁸
D032 ⁹	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet \$268.48 standards ⁸	10 and meet \$268.48 standards ⁸
D033 ⁹	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet \$268.48 standards ⁸	5.6 and meet \$268.48 standards ⁸
D034 ⁹	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet \$268.48 standards ⁸	30 and meet \$268.48 standards ⁸
D035 ⁹	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet \$268.48 standards ⁸	36 and meet \$268.48 standards ⁸
D036 ⁹	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet \$268.48 standards ⁸	14 and meet \$268.48 standards ⁸
D037 ⁹	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet \$268.48 standards ⁸	7.4 and meet \$268.48 standards ⁸

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		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
D038 ⁹	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet \$268.48 standards ⁸	16 and meet \$268.48 standards ⁸
D039 ⁹	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D040 ⁹	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸
D041 ⁹	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet \$268.48 standards ⁸	7.4 and meet \$268.48 standards ⁸
D042 ⁹	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet \$268.48 standards ⁸	7.4 and meet \$268.48 standards ⁸
D043 ⁹	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75-01-4	0.27 and meet \$268.48 standards ⁸	6.0 and meet \$268.48 standards ⁸

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	
F001, F002, F003, F004 and/or F005 solvent wastes that contain any combination of one or more of the following spent solvents: acetone, benzene, n-butyl alcohol, carbon disulfide, carbon tetrachloride, chlorinated fluorocarbons, chlorobenzene, o-cresol, m-cresol, p-cresol, cyclohexanone, o-dichlorobenzene, 2-ethoxyethanol, ethyl acetate, ethyl benzene, ethyl ether, isobutyl alcohol, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, nitrobenzene, 2-nitropropane, pyridine, tetrachloroethylene, toluene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane, trichloroethylene, trichloromonofluoromethane, and/or xylenes [except as specifically noted in other subcategories]. See further details of these listings in § 261.31		Acetone	67-64-1	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Benzene	71-43-2	160
		n-Butyl alcohol	71-36-3	10
		Carbon disulfide	75-15-0	2.6
		Carbon tetrachloride	56-23-5	NA
		Chlorobenzene	108-90-7	6.0
		o-Cresol	95-48-7	6.0
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	11.2
		Cyclohexanone	108-94-1	NA
		o-Dichlorobenzene	95-50-1	6.0
		Ethyl acetate	141-78-6	33
		Ethyl benzene	100-41-4	10
		Ethyl ether	60-29-7	160
		Isobutyl alcohol	78-83-1	170
		Methanol	67-56-1	NA

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Methylene chloride	75-9-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Nitrobenzene	98-95-3	0.068	14
		Pyridine	110-86-1	0.014	16
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
		Trichloroethylene	79-01-6	0.054	6.0
		Trichloromonofluoromethane	75-69-4	0.020	30
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol. (formerly 268.41(c))	Methanol	67-56-1	5.6	0.75 mg/l TCLP
		2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	110-80-5	BIODG; or CMBST	CMBST

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F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F007	Spent cyanide plating bath solutions from electroplating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F010	Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	NA
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
F012	Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.	Cadmium	7440-43-9	NA	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.				
F020, F021, F022, F023, F026	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives, excluding wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F020); (2) pentachlorophenol, or of intermediates used to produce its derivatives (i.e., F021); (3) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F022); and from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of: (1) tri- or tetrachlorophenols, excluding wastes from equipment used only for the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol (F023); (2) tetra-, penta-, or hexachlorobenzenes under alkaline conditions (i.e., F026).				

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
F024	Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. (This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in §261.31 or §261.32).	All F024 wastes	NA	CMBST	CMBST
		2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
		3-Chloropropylene	107-05-1	0.036	30
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Hexachloroethane	67-72-1	0.055	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
F025	Condensed light ends from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Light Ends Subcategory	1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		Methylene chloride	75-9-2	0.089	30
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Vinyl chloride	75-01-4	0.27	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT	WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
	Spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. F025 - Spent Filters/Aids and Desiccants Subcategory	Carbon tetrachloride	56-23-5	6.0
		Chloroform	67-66-3	6.0
		Hexachlorobenzene	118-74-1	10
		Hexachlorobutadiene	87-68-3	5.6
		Hexachloroethane	67-72-1	30
		Methylene chloride	75-9-2	30
		1,1,2-Trichloroethane	79-00-5	6.0
		Trichloroethylene	79-01-6	6.0
		Vinyl chloride	75-01-4	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.001
F027	Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component).	HxCDFs (All Hexachlorodibenzofurans)	NA	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.001
		Pentachlorophenol	87-86-5	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁵
F028	Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Wastes Nos. F020, F021, F023, F026, and F027.	2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachlorophenol	87-86-5	0.089	7.4
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT	WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
F037	Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.	Acenaphthene	83-32-9	NA
		Anthracene	120-12-7	3.4
		Benzene	71-43-2	10
		Benz(a)anthracene	56-55-3	3.4
		Benzo(a)pyrene	50-32-8	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	28
		Chrysene	218-01-9	3.4
		Di-n-butyl phthalate	84-74-2	28
		Ethylbenzene	100-41-4	10
		Fluorene	86-73-7	NA
		Naphthalene	91-20-3	5.6
		Phenanthrene	85-01-8	5.6
		Phenol	108-95-2	6.2
		Pyrene	129-00-0	8.2
		Toluene	108-88-3	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	30
		Chromium (Total)	7440-47-3	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	590
		Lead	7439-92-1	NA
		Nickel	7440-02-0	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air floatation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in §261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological units) and F037, K048, and K051 are not included in this listing.	Benzene	71-43-2	0.14
		Benzo(a)pyrene	50-32-8	0.061
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28
		Chrysene	218-01-9	0.059
		Di-n-butyl phthalate	84-74-2	0.057
		Ethylbenzene	100-41-4	0.057
		Fluorene	86-73-7	0.059
		Naphthalene	91-20-3	0.059
		Phenanthrene	85-01-8	0.059
		Phenol	108-95-2	0.039
		Pyrene	129-00-0	0.067
		Toluene	108-88-3	0.080
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32
		Chromium (Total)	7440-47-3	2.77
		Cyanides (Total) ⁷	57-12-5	1.2
		Lead	7439-92-1	0.69
		Nickel	7440-02-0	NA
				5.0 mg/l TCLP

Concentration in mg/kg⁵ unless noted as "mg/l TCLP"; or Technology Code⁴

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.).	Acenaphthylene	208-96-8	0.059	3.4
		Acenaphthene	83-32-9	0.059	3.4
		Acetone	67-64-1	0.28	160
		Acetonitrile	75-05-8	5.6	NA
		Acetophenone	96-86-2	0.010	9.7
		2-Acetylaminofluorene	53-96-3	0.059	140
		Acrolein	107-02-8	0.29	NA
		Acrylonitrile	107-13-1	0.24	84
		Aldrin	309-00-2	0.021	0.066
		4-Aminobiphenyl	92-67-1	0.13	NA
		Aniline	62-53-3	0.81	14
		Anthracene	120-12-7	0.059	3.4
		Aramite	140-57-8	0.36	NA
		alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC	58-89-9	0.0017	0.066
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Bromodichloromethane	75-27-4	0.35	15
		Methyl bromide (Bromomethane)	74-83-9	0.11	15
		4-Bromophenyl phenyl ether	101-55-3	0.055	15
		n-Butyl alcohol	71-36-3	5.6	2.6
		Butyl benzyl phthalate	85-68-7	0.017	28
		2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
		Carbon disulfide	75-15-0	3.8	NA
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		p-Chloroaniline	106-47-8	0.46	16
		Chlorobenzene	108-90-7	0.057	6.0
		Chlorobenzilate	510-15-6	0.10	NA
		2-Chloro-1,3-butadiene	126-99-8	0.057	NA
		Chlorodibromomethane	124-48-1	0.057	15
		Chloroethane	75-00-3	0.27	6.0
		bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		bis(2-Chloroethyl)ether	111-44-4	0.033
		Chloroform	67-66-3	0.046
		bis(2-Chloroisopropyl)ether	39638-32-9	0.055
		p-Chloro-m-cresol	59-50-7	0.018
		Chloromethane (Methyl chloride)	74-87-3	0.19
		2-Chloronaphthalene	91-58-7	0.055
		2-Chlorophenol	95-57-8	0.044
		3-Chloropropylene	107-05-1	0.036
		Chrysene	218-01-9	0.059
		o-Cresol	95-48-7	0.11
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77
		Cyclohexanone	108-94-1	0.36
		1,2-Dibromo-3-chloropropane	96-12-8	0.11
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028
		Dibromomethane	74-95-3	0.11
		2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72
				6.0
				6.0
				7.2
				14
				30
				5.6
				5.7
				30
				3.4
				5.6
				5.6
				NA
				15
				15
				15
				10

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
		o,p'-DDT	789-02-6	0.0039	0.087
		p,p'-DDT	50-29-3	0.0039	0.087
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Dibenz(a,e)pyrene	192-65-4	0.061	NA
		m-Dichlorobenzene	541-73-1	0.036	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Dichlorodifluoromethane	75-71-8	0.23	7.2
		1,1-Dichloroethane	75-34-3	0.059	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		2,4-Dichlorophenol	120-83-2	0.044	14
		2,6-Dichlorophenol	87-65-0	0.044	14
		1,2-Dichloropropane	78-87-5	0.85	18
		cis-1,3-Dichloropropylene	10061-01-5	0.036	18

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
		Dieldrin	60-57-1	0.017	0.13
		Diethyl phthalate	84-66-2	0.20	28
		2,4-Dimethyl phenol	105-67-9	0.036	14
		Dimethyl phthalate	131-11-3	0.047	28
		Di-n-butyl phthalate	84-74-2	0.057	28
		1,4-Dinitrobenzene	100-25-4	0.32	2.3
		4,6-Dinitro-o-cresol	534-52-1	0.28	160
		2,4-Dinitrophenol	51-28-5	0.12	160
		2,4-Dinitrotoluene	121-14-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
		Di-n-octyl phthalate	117-84-0	0.017	28
		Di-n-propylnitrosamine	621-64-7	0.40	14
		1,4-Dioxane	123-91-1	12.0	170
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	NA
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	NA
		1,2-Diphenylhydrazine	122-66-7	0.087	NA
		Disulfoton	298-04-4	0.017	6.2
		Endosulfan I	939-98-8	0.023	0.066

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
		Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
		Ethyl acetate	141-78-6	0.34	33
		Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
		Ethyl benzene	100-41-4	0.057	10
		Ethyl ether	60-29-7	0.12	160
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Ethyl methacrylate	97-63-2	0.14	160
		Ethylene oxide	75-21-8	0.12	NA
		Famphur	52-85-7	0.017	15
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	0.059	3.4
		Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorobenzene	118-74-1	0.055	10
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	0.035	30
		Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
		Iodomethane	74-88-4	0.19	65
		Isobutyl alcohol	78-83-1	5.6	170
		Isodrin	465-73-6	0.021	0.066
		Isosafrole	120-58-1	0.081	2.6
		Kepone	143-50-8	0.0011	0.13
		Methacrylonitrile	126-98-7	0.24	84
		Methanol	67-56-1	5.6	NA
		Methapyrilene	91-80-5	0.081	1.5
		Methoxychlor	72-43-5	0.25	0.18
		3-Methylcholanthrene	56-49-5	0.0055	15
		4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Methyl isobutyl ketone	108-10-1	0.14	33
		Methyl methacrylate	80-62-6	0.14	160
		Methyl methansulfonate	66-27-3	0.018	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Methyl parathion	298-00-0	0.014	4.6
		Naphthalene	91-20-3	0.059	5.6
		2-Naphthylamine	91-59-8	0.52	NA
		p-Nitroaniline	100-01-6	0.028	28
		Nitrobenzene	98-95-3	0.068	14
		5-Nitro-o-toluidine	99-55-8	0.32	28
		p-Nitrophenol	100-02-7	0.12	29
		N-Nitrosodiethylamine	55-18-5	0.40	28
		N-Nitrosodimethylamine	62-75-9	0.40	NA
		N-Nitroso-di-n-butylamine	924-16-3	0.40	17
		N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
		N-Nitrosomorpholine	59-89-2	0.40	2.3
		N-Nitrosopiperidine	100-75-4	0.013	35
		N-Nitrosopyrrolidine	930-55-2	0.013	35
		Parathion	56-38-2	0.014	4.6
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
		Pentachlorobenzene	608-93-5	0.055	10
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		Pentachloronitrobenzene	82-68-8	0.055	4.8
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenacetin	62-44-2	0.081	16
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Phorate	298-02-2	0.021	4.6
		Phthalic anhydride	85-44-9	0.055	NA
		Pronamide	23950-58-5	0.093	1.5
		Pyrene	129-00-0	0.067	8.2
		Pyridine	110-86-1	0.014	16
		Safrrole	94-59-7	0.081	22
		Silvex (2,4,5-TP)	93-72-1	0.72	7.9
		2,4,5-T	93-76-5	0.72	7.9
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	
		Tetrachloroethylene	127-18-4	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		2,3,4,6-Tetrachlorophenol	58-90-2	6.0
		Toluene	108-88-3	7.4
		Toxaphene	8001-35-2	10
		Bromoform (Tribromomethane)	75-25-2	2.6
		1,2,4-Trichlorobenzene	120-82-1	15
		1,1,1-Trichloroethane	71-55-6	19
		1,1,2-Trichloroethane	79-00-5	6.0
		Trichloroethylene	79-01-6	6.0
		Trichloromonofluoromethane	75-69-4	30
		2,4,5-Trichlorophenol	95-95-4	7.4
		2,4,6-Trichlorophenol	88-06-2	7.4
		1,2,3-Trichloropropane	96-18-4	30
		1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	30
		tris(2,3-Dibromopropyl) phosphate	126-72-7	NA
		Vinyl chloride	75-01-4	6.0
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	30
		Antimony	7440-36-0	2.1 mg/l TCLP
		Arsenic	7440-38-2	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	NA
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	NA
		Fluoride	16964-48-8	35	NA
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Sulfide	8496-25-8	14	NA
		Thallium	7440-28-0	1.4	NA
		Vanadium	7440-62-2	4.3	NA
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K005	Wastewater treatment sludge from the production of chrome green pigments.	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous).	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
K007	Wastewater treatment sludge from the production of iron blue pigments.	Lead	7439-92-1	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K008	Oven residue from the production of chrome oxide green pigments.	Cyanides (Total) ⁷	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K010	Distillation side cuts from the production of acetaldehyde from ethylene.	Chloroform	67-66-3	0.046	6.0
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K014	Bottoms from the acetonitrile purification column in the production of acrylonitrile.	Acetonitrile	75-05-8	5.6	38
		Acrylonitrile	107-13-1	0.24	84
		Acrylamide	79-06-1	19	23
		Benzene	71-43-2	0.14	10
		Cyanide (Total)	57-12-5	1.2	590
K015	Still bottoms from the distillation of benzyl chloride.	Anthracene	120-12-7	0.059	3.4
		Benzal chloride	98-87-3	0.055	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	6.8
		Phenanthrene	85-01-8	5.6
		Toluene	108-88-3	10
		Chromium (Total)	7440-47-3	0.86 mg/l TCLP
		Nickel	7440-02-0	5.0 mg/l TCLP
		Hexachlorobenzene	118-74-1	10
		Hexachlorobutadiene	87-68-3	5.6
		Hexachlorocyclopentadiene	77-47-4	2.4
		Hexachloroethane	67-72-1	30
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	Tetrachloroethylene	127-18-4	6.0
		bis(2-Chloroethyl)ether	111-44-4	6.0
		1,2-Dichloropropane	78-87-5	18
		1,2,3-Trichloropropane	96-18-4	30
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	Chloroethane	75-00-3	6.0
		Chloromethane	74-87-3	NA
		1,1-Dichloroethane	75-34-3	6.0
		1,2-Dichloroethane	107-06-2	6.0
K018	Heavy ends from the fractionation column in ethyl chloride production.	Hexachlorobenzene	118-74-1	10

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		p-Dichlorobenzene	106-46-7	0.090	NA
		1,2-Dichloroethane	107-06-2	0.21	6.0
		Fluorene	86-73-7	0.059	NA
		Hexachloroethane	67-72-1	0.055	30
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	NA
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		Carbon tetrachloride	56-23-5	0.057	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K022	Distillation bottom tars from the production of phenol/acetone from cumene.	Chloroform	67-66-3	0.046	6.0
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Toluene	108-88-3	0.080	10
		Acetophenone	96-86-2	0.010	9.7
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Phenol	108-95-2	0.039	6.2
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
K023	Distillation light ends from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEX ⁶ fb SSTRP fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	CMBST	CMBST
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or CMBST	CMBST
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	1,1-Dichloroethane	75-34-3	0.059	6.0
		trans-1,2-Dichloroethylene	156-60-5	0.054	30
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	NA	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Cadmium	7440-43-9	0.69	NA
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
K029	Waste from the product steam stripper in the production of 1,1,1-trichloroethane.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Chloroform	67-66-3	0.046	6.0
		1,2-Dichloroethane	107-06-2	0.21	6.0
		1,1-Dichloroethylene	75-35-4	0.025	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
K030	Column bodies or heavy ends from the combined production of trichloroethylene and perchloroethylene.	Vinyl chloride	75-01-4	0.27	6.0
		o-Dichlorobenzene	95-50-1	0.088	NA
		p-Dichlorobenzene	106-46-7	0.090	NA
		Hexachlorobutadiene	87-68-3	0.055	5.6
		Hexachloroethane	67-72-1	0.055	30
		Hexachloropropylene	1888-71-7	NA	30
		Pentachlorobenzene	608-93-5	NA	10
		Pentachloroethane	76-01-7	NA	6.0
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
K031	By-product salts generated in the production of MSMA and cacodylic acid.	1,2,4-Trichlorobenzene	120-82-1	0.055	19
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
K032	Wastewater treatment sludge from the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
		Heptachlor	76-44-8	0.0012	0.066
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	Hexachlorocyclopentadiene	77-47-4	0.057	2.4

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		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K035	Wastewater treatment sludges generated in the production of creosote.	Acenaphthene	83-32-9	NA	3.4
		Anthracene	120-12-7	NA	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Dibenz(a,h)anthracene	53-70-3	NA	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Fluorene	86-73-7	NA	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	NA	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	Pyrene	129-00-0	0.067	8.2
		Disulfoton	298-04-4	0.017	6.2
K037	Wastewater treatment sludges from the production of disulfoton.	Disulfoton	298-04-4	0.017	6.2
		Toluene	108-88-3	0.080	10

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K038	Wastewater from the washing and stripping of phorate production.	Phorate	298-02-2	0.021	4.6
K039	Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.	NA	NA	CARBN; or CMBST	CMBST
K040	Wastewater treatment sludge from the production of phorate.	Phorate	298-02-2	0.021	4.6
K041	Wastewater treatment sludge from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	o-Dichlorobenzene	95-50-1	0.088	6.0
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		2,4-Dichlorophenol	120-83-2	0.044	14
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	2,6-Dichlorophenol	187-65-0	0.044	14
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
		2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
		Pentachlorophenol	87-86-5	0.089	7.4
		Tetrachloroethylene	127-18-4	0.056	6.0
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001

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		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
		NA	NA	DEACT	DEACT
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	DEACT
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	DEACT
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	Lead	7439-92-1	0.69	0.37 mg/l TCLP
K047	Pink/red water from TNT operations	NA	NA	DEACT	DEACT
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	218-01-9	0.059	3.4
		Di-n-butyl phthalate	84-74-2	0.057	28
		Ethylbenzene	100-41-4	0.057	10

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K049	Slop oil emulsion solids from the petroleum refining industry.	Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-33	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
		Anthracene	120-12-7	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Carbon disulfide	75-15-0	3.8	NA
		Chrysene	2218-01-9	0.059	3.4
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Phenol	108-95-2	0.039	6.2
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
K051	API separator sludge from the petroleum refining industry.	Acenaphthene	83-32-9	0.059	NA
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
		Chrysene	2218-01-9	0.059	3.4
		Di-n-butyl phthalate	105-67-9	0.057	28
		Ethylbenzene	100-41-4	0.057	10
		Fluorene	86-73-7	0.059	NA
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
K052	Tank bottoms (lead) from the petroleum refining industry.				

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		2,4-Dimethylphenol	105-67-9	0.036	NA
		Ethylbenzene	100-41-4	0.057	10
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Toluene	108-88-3	0.08	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Lead	7439-92-1	0.69	NA
		Nickel	7440-02-0	NA	5.0 mg/l TCLP
		Benzene	71-43-2	0.14	10
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Naphthalene	91-20-3	0.059	5.6
K060	Ammonia still lime sludge from coking operations.	Phenol	108-95-2	0.039	6.2
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Antimony	7440-36-0	NA	2.1 mg/l TCLP
K061	Emission control dust/sludge from the primary production of steel in electric furnaces.	Arsenic	7440-38-2	NA	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K062		Barium	7440-39-3	NA	7.6 mg/l TCLP
		Beryllium	7440-41-7	NA	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	NA	0.16 mg/l TCLP
		Silver	7440-22-4	NA	0.30 mg/l TCLP
		Thallium	7440-28-0	NA	0.078 mg/l TCLP
		Zinc	7440-66-6	NA	5.3 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K069	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	Nickel	7440-02-0	3.98	NA
		Emission control dust/sludge from secondary lead smelting. - Calcium Sulfate (Low Lead) Subcategory	7440-43-9	0.69	0.19 mg/l TCLP
		Emission control dust/sludge from secondary lead smelting. - Non-Calcium Sulfate (High Lead) Subcategory	7439-92-1	0.69	0.37 mg/l TCLP
		NA	NA	NA	READ
K071	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used) nonwastewaters that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K073	K071 (Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.) nonwastewaters that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
		Mercury	7439-97-6	0.15	NA
	Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachloroethane	67-72-1	0.055	30
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,1-Trichloroethane	71-55-6	0.054	6.0
		Aniline	62-53-3	0.81	14
K083	Distillation bottoms from aniline production.	Benzene	71-43-2	0.14	10
		Cyclohexanone	108-94-1	0.36	NA
		Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
		Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
		Nitrobenzene	98-95-3	0.068	14
		Phenol	108-95-2	0.039	6.2
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
K084	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	WASTEWATERS Concentration in mg/l ³ , or Technology Code ⁴
K085	Distillation or fractionation column bottoms from the production of chlorobenzenes.	Benzene	71-43-2	10
		Chlorobenzene	108-90-7	6.0
		m-Dichlorobenzene	541-73-1	6.0
		o-Dichlorobenzene	95-50-1	6.0
		p-Dichlorobenzene	106-46-7	6.0
		Hexachlorobenzene	118-74-1	10
		Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	10
		Pentachlorobenzene	608-93-5	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	14
		1,2,4-Trichlorobenzene	120-82-1	19
K086	Solvent wastes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	Acetone	67-64-1	160
		Acetophenone	96-86-2	9.7
		bis(2-Ethylhexyl) phthalate	117-81-7	28
		n-Butyl alcohol	71-36-3	2.6
		Butylbenzyl phthalate	85-68-7	28
		Cyclohexanone	108-94-1	NA
		o-Dichlorobenzene	95-50-1	6.0
		Diethyl phthalate	84-66-2	28
		Dimethyl phthalate	131-11-3	28
		Di-n-butyl phthalate	84-74-2	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	
				Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Di-n-octyl phthalate	117-84-0	0.017
		Ethyl acetate	141-78-6	0.34
		Ethylbenzene	100-41-4	0.057
		Methanol	67-56-1	5.6
		Methyl ethyl ketone	78-93-3	0.28
		Methyl isobutyl ketone	108-10-1	0.14
		Methylene chloride	75-09-2	0.089
		Naphthalene	91-20-3	0.059
		Nitrobenzene	98-95-3	0.068
		Toluene	108-88-3	0.080
		1,1,1-Trichloroethane	71-55-6	0.054
		Trichloroethylene	79-01-6	0.054
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32
		Chromium (Total)	7440-47-3	2.77
		Cyanides (Total) ⁷	57-12-5	1.2
		Lead	7439-92-1	0.69
		Acenaphthylene	208-96-8	0.059
		Benzene	71-43-2	0.14
		Chrysene	218-01-9	0.059
		Fluoranthene	206-44-0	0.068
K087	Decanter tank tar sludge from coking operations.			0.86 mg/l TCLP
				590
				0.37 mg/l TCLP
				3.4
				10
				3.4
				3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K088	Spent potliners from primary aluminum reduction.	Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Naphthalene	91-20-3	0.059	5.6
		Phenanthrene	85-01-8	0.059	5.6
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno(1,2,3,-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Cyanide (Total) ⁷	57-12-5	1.2	590
		Cyanide (Amenable) ⁷	57-12-5	0.86	30
		Fluoride	16984-48-8	35	48 mg/l TCLP
K093	Distillation light ends from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
K094	Distillation bottoms from the production of phthalic anhydride from ortho-xylene.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K095	Distillation bottoms from the production of 1,1,1-trichloroethane.	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
		Hexachloroethane	67-72-1	0.055	30
		Pentachloroethane	76-01-7	0.055	6.0
		1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		m-Dichlorobenzene	541-73-1	0.036	6.0
		Pentachloroethane	76-01-7	0.055	6.0
K096	Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
		1,1,2,2-Tetrachloroethane	79-34-6	0.057	6.0
		Tetrachloroethylene	127-18-4	0.056	6.0
		1,2,4-Trichlorobenzene	120-82-1	0.055	19
		1,1,2-Trichloroethane	79-00-5	0.054	6.0
		Trichloroethylene	79-01-6	0.054	6.0
		Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
		Hexachlorocyclopentadiene	77-47-4	0.057	2.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K098	Untreated process wastewater from the production of toxaphene.	Toxaphene	8001-35-2	0.0095	2.6
K099	Untreated wastewater from the production of 2,4-D.	2,4-Dichlorophenoxyacetic acid	94-75-7	0.72	10
		HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		HxCDFs (All Hexachlorodibenzofurans)	NA	0.000063	0.001
		PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		PeCDFs (All Pentachlorodibenzofurans)	NA	0.000035	0.001
		TCDDs (All Tetrachlorodibenzo-p-dioxins)	NA	0.000063	0.001
		TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.	Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
K101	Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	o-Nitroaniline	88-74-4	0.27	14
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Cadmium	7440-43-9	0.69	NA
		Lead	7439-92-1	0.69	NA

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K102	Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	Mercury	7439-97-6	0.15
		o-Nitrophenol	88-75-5	0.028
		Arsenic	7440-38-2	1.4
		Cadmium	7440-43-9	0.69
		Lead	7439-92-1	0.69
		Mercury	7439-97-6	0.15
K103	Process residues from aniline extraction from the production of aniline.	Aniline	62-53-3	0.81
		Benzene	71-43-2	0.14
		2,4-Dinitrophenol	51-28-5	0.12
		Nitrobenzene	98-95-3	0.068
		Phenol	108-95-2	0.039
		Aniline	62-53-3	0.81
K104	Combined wastewater streams generated from nitrobenzene/ aniline production.	Benzene	71-43-2	0.14
		2,4-Dinitrophenol	51-28-5	0.12
		Nitrobenzene	98-95-3	0.068
		Phenol	108-95-2	0.039
		Cyanides (Total) ⁷	57-12-5	1.2
		Benzene	71-43-2	0.14
K105	Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.	Chlorobenzene	108-90-7	0.057
		2-Chlorophenol	95-57-8	0.044
		o-Dichlorobenzene	95-50-1	0.088
				6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		p-Dichlorobenzene	106-46-7	0.090	6.0
		Phenol	108-95-2	0.039	6.2
		2,4,5-Trichlorophenol	95-95-4	0.18	7.4
		2,4,6-Trichlorophenol	88-06-2	0.035	7.4
K106	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	K106 (wastewater treatment sludge from the mercury cell process in chlorine production) nonwastewaters that contain less than 260 mg/kg total mercury that are residues from RMERC.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Other K106 nonwastewaters that contain less than 260 mg/kg total mercury and are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All K106 wastewaters.	Mercury	7439-97-6	0.15	NA
	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K107	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K108	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K109					

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K111	Product washwaters from the production of dinitrotoluene via nitration of toluene	2,4-Dinitrotoluene	121-1-2	0.32	140
		2,6-Dinitrotoluene	606-20-2	0.55	28
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CMBST; or CHOXD fb CARBN; or BIODG fb CARBN	CMBST
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR CMBST	CMBST
K114	Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; or CMBST	CMBST
K115	Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		NA	NA	CARBN; or CMBST	CMBST
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or CMBST	CMBST
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K118	Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenedisulfoncarbamate acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K124	Reactor vent scrubber water from the production of ethylenedisulfoncarbamate acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenedisulfoncarbamate acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenedisulfoncarbamate acid and its salts.	NA	NA	CMBST; or CHOXD fb (BIODG or CARBN)	CMBST
K131	Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K132	Spent absorbent and wastewater separator solids from the production of methyl bromide.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	Methyl bromide (Bromomethane)	74-83-9	0.11	15
		Chloroform	67-66-3	0.046	6.0
		Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-2-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.	Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Chrysene	218-01-9	0.059	3.4
		Benzene	71-43-2	0.14	10
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	10
		Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Chrysene	218-01-9	0.059	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
K147	Tar storage tank residues from coal tar refining.	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Naphthalene	91-20-3	0.059	5.6
		Benzene	71-43-2	0.14	10
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benzo(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
		Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluoranthene)	207-08-9	0.11	6.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable				
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		NONWASTEWATERS
		Common Name	CAS ² Number	
K149	Distillation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.)	Chlorobenzene	108-90-7	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Chloroform	67-66-3	6.0
		Chloromethane	74-87-3	6.0
		p-Dichlorobenzene	106-46-7	30
		Hexachlorobenzene	118-74-1	6.0
		Pentachlorobenzene	118-74-1	10
		1,2,4,5-Tetrachlorobenzene	608-93-5	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	14
		Toluene	108-88-3	10
		Carbon tetrachloride	56-23-5	10
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Chloroform	67-66-3	Concentration in mg/l ³ ; or Technology Code ⁴
		Chloromethane	74-87-3	6.0
		p-Dichlorobenzene	106-46-7	30
		Hexachlorobenzene	118-74-1	6.0
		Pentachlorobenzene	118-74-1	10
		1,2,4,5-Tetrachlorobenzene	608-93-5	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	14
		1,1,2,2-Tetrachloroethane	79-34-5	14
		Tetrachloroethylene	127-18-4	6.0
		1,2,4-Trichlorobenzene	120-82-1	6.0

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K151	Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Benzene	71-43-2	0.14	10
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Hexachlorobenzene	118-74-1	0.055	10
		Pentachlorobenzene	608-93-5	0.055	10
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
		Tetrachloroethylene	127-18-4	0.056	6.0
		Toluene	108-88-3	0.080	10
		Acetonitrile	75-05-8	5.6	38
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. ¹⁰	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. ¹⁰	Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
		Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. ¹⁰	Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
K159	Organics from the treatment of thiocarbamate wastes. ¹⁰	Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
		Benzene	71-43-2	0.14	10
		Butylate	2008-41-5	0.042	1.4
		EPTC (Eptam)	759-94-4	0.042	1.4
		Molinate	2212-67-1	0.042	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts. ¹⁰	Pebulate	1114-71-2	0.042	1.4
		Vernolate	1929-77-7	0.042	1.4
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.9	5.0 mg/l TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total)	NA	0.028	28
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P001	Warfarin, & salts, when present at concentrations greater than 0.3%				

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		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P002	1-Acetyl-2-thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P003	Acrolein	Acrolein	107-02-8	0.29	CMBST
P004	Aldrin	Aldrin	309-00-2	0.021	0.066
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P007	5-Aminomethyl 3-isoxazolol	5-Aminomethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P010	Arsenic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P011	Arsenic pentoxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P012	Arsenic trioxide	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P013	Barium cyanide	Barium	7440-39-3	NA	7.6 mg/l TCLP
		Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P015	Beryllium dust	Beryllium	7440-41-7	RMETL; or RTHRM	RMETL; or RTHRM

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		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
P016	Dichloromethyl ether (Bis(chloromethyl)ether)	Dichloromethyl ether	542-88-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	2-sec-Butyl-4,6-dinitrophenol (Dinoseb)	88-85-7	0.066	2.5
P021	Calcium cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P022	Carbon disulfide	Carbon disulfide	75-15-0	3.8	CMBST
		Carbon disulfide; alternate ⁶ standard for nonwastewaters only	75-15-0	NA	4.8 mg/l TCLP
P023	Chloroacetaldehyde	Chloroacetaldehyde	107-20-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P024	p-Chloroaniline	p-Chloroaniline	106-47-8	0.46	16
P026	1-(o-Chlorophenyl)thiourea	1-(o-Chlorophenyl)thiourea	5344-82-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P027	3-Chloropropionitrile	3-Chloropropionitrile	542-76-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P028	Benzyl chloride	Benzyl chloride	100-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P029	Copper cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P030	Cyanides (soluble salts and complexes)	Cyanides (Total) ⁷	57-12-5	1.2	590

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P031	Cyanogen	Cyanogen	460-19-5	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P033	Cyanogen chloride	Cyanogen chloride	506-77-4	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131-89-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P036	Dichlorophenylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P037	Dieldrin	Dieldrin	60-57-1	0.017	0.13
P038	Diethylarsine	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
P039	Disulfoton	Disulfoton	298-04-4	0.017	6.2
P040	0,0-Diethyl O-pyrazinyl phosphorothioate	0,0-Diethyl O-pyrazinyl phosphorothioate	297-97-2	CARBN; or CMBST	CMBST
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311-45-5	CARBN; or CMBST	CMBST
P042	Epinephrine	Epinephrine	51-43-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluorophosphate (DFP)	55-91-4	CARBN; or CMBST	CMBST
P044	Dimethoate	Dimethoate	60-51-5	CARBN; or CMBST	CMBST
P045	Thiofanox	Thiofanox	39196-18-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P046	alpha, alpha-Dimethylphenethylamine	alpha, alpha-Dimethylphenethylamine	122-09-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	543-52-1	0.28	160

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
	4,6-Dinitro-o-cresol salts	NA	NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	51-28-5	0.12	160
P049	Dithiobiuret	Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P050	Endosulfan	Endosulfan I	939-98-8	0.023	0.066
		Endosulfan II	33213-6-5	0.029	0.13
		Endosulfan sulfate	1031-07-8	0.029	0.13
P051	Endrin	Endrin	72-20-8	0.0028	0.13
		Endrin aldehyde	7421-93-4	0.025	0.13
P054	Aziridine	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P056	Fluorine	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR
P057	Fluoroacetamide	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P059	Heptachlor	Heptachlor	76-44-8	0.0012	0.066
		Heptachlor epoxide	1024-57-3	0.016	0.066
P060	Isodrin	Isodrin	465-73-6	0.021	0.066
P062	Hexaethyl tetraphosphate	Hexaethyl tetraphosphate	757-58-4	CARBN; or CMBST	CMBST
P063	Hydrogen cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P065	Mercury fulminate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC
	Mercury fulminate nonwastewaters that are either incinerator residues or are residues from RMERC; and contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	Mercury fulminate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Mercury fulminate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
P066	All mercury fulminate wastewaters.	Mercury	7439-97-6	0.15	NA
	Methomyl	Methomyl	16752-77-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P067	2-Methyl-aziridine	2-Methyl-aziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P069	2-Methyl-lactonitrile	2-Methyl-lactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P071	Methyl parathion	Methyl parathion	298-00-0	0.014	4.6

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P073	Nickel carbonyl	Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P074	Nickel cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	ADGAS
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	28
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	ADGAS
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; or CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	2.3
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or CMBST	CMBST
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	RMETL; or RTHRM	RMETL; or RTHRM
P088	Endothall	Endothall	145-73-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P089	Parathion	Parathion	56-38-2	0.014	4.6

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P092	Phenyl mercuric acetate nonwastewaters, regardless of their total mercury content, that are not incinerator residues or are not residues from RMERC.	Mercury	7439-97-6	NA	IMERC; or RMERC
	Phenyl mercuric acetate nonwastewaters that are either incinerator residues or are residues from RMERC; and still contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	Phenyl mercuric acetate nonwastewaters that are residues from RMERC and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	Phenyl mercuric acetate nonwastewaters that are incinerator residues and contain less than 260 mg/kg total mercury.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All phenyl mercuric acetate wastewaters.	Mercury	7439-97-6	0.15	NA
P093	Phenylthiourea	Phenylthiourea	103-85-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P094	Phorate	Phorate	298-02-2	0.021	4.6
P095	Phosgene	Phosgene	75-44-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P096	Phosphine	Phosphine	7803-51-2	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P097	Famphur	Famphur	52-85-7	0.017	15
P098	Potassium cyanide.	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P099	Potassium silver cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107-12-0	0.24	360
P102	Propargyl alcohol	Propargyl alcohol	107-19-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P103	Selenourea	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
P104	Silver cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
P105	Sodium azide	Sodium azide	26628-22-8	CHOXD; CHRED; or CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P106	Sodium cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P108	Strychnine and salts	Strychnine and salts	57-24-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689-24-5	CARBN; or CMBST	CMBST
P110	Tetraethyl lead	Lead	7439-92-1	0.69	0.37 mg/l TCLP
P111	Tetraethylpyrophosphate	Tetraethylpyrophosphate	107-49-3	CARBN; or CMBST	CMBST
P112	Tetranitromethane	Tetranitromethane	509-14-8	CHOXD; CHRED; or CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
P113	Thallic oxide	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P114	Thallium selenite	Selenium	7782-49-2	0.82	0.16 mg/l TCLP

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P115	Thallium (I) sulfate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
P116	Thiosemicarbazide	Thiosemicarbazide	79-19-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P118	Trichloromethanethiol	Trichloromethanethiol	75-70-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
P119	Ammonium vanadate	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P120	Vanadium pentoxide	Vanadium (measured in wastewaters only)	7440-62-2	4.3	STABL
P121	Zinc cyanide	Cyanides (Total) ⁷	57-12-5	1.2	590
		Cyanides (Amenable) ⁷	57-12-5	0.86	30
P122	Zinc phosphide Zn ₃ P ₂ , when present at concentrations greater than 10%	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
P123	Toxaphene	Toxaphene	8001-35-2	0.0095	2.6
P127	Carbofuran ¹⁰	Carbofuran	1563-66-2	0.006	0.14
P128	Mexacarbate ¹⁰	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate ¹⁰	Tirpate	26419-73-8	0.056	0.28
P188	Physostigmine salicylate ¹⁰	Physostigmine salicylate	57-64-7	0.056	1.4
P189	Carbosulfan ¹⁰	Carbosulfan	55285-14-8	0.028	1.4
P190	Metolcarb ¹⁰	Metolcarb	1129-41-5	0.056	1.4
P191	Dimetilan ¹⁰	Dimetilan	644-64-4	0.056	1.4
P192	Isolan ¹⁰	Isolan	119-38-0	0.056	1.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
P194	Oxamyl ¹⁰	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate ¹⁰	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate ¹⁰	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride ¹⁰	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb ¹⁰	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb ¹⁰	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate ¹⁰	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone ¹⁰	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine ¹⁰	Physostigmine	57-47-6	0.056	1.4
P205	Ziram ¹⁰	Dithiocarbamates (total)	NA	0.028	28
U001	Acetaldehyde	Acetaldehyde	75-07-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U002	Acetone	Acetone	67-64-1	0.28	160
U003	Acetonitrile	Acetonitrile	75-05-8	5.6	CMBST
		Acetonitrile; alternate ⁶ standard for nonwastewaters only	75-05-8	NA	38
U004	Acetophenone	Acetophenone	98-86-2	0.010	9.7
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53-96-3	0.059	140
U006	Acetyl chloride	Acetyl Chloride	75-36-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U007	Acrylamide	Acrylamide	79-06-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U008	Acrylic acid	Acrylic acid	79-10-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U009	Acrylonitrile	Acrylonitrile	107-13-1	0.24	84
U010	Mitomycin C	Mitomycin C	50-07-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U011	Amitrole	Amitrole	61-82-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U012	Aniline	Aniline	62-53-3	0.81	14
U014	Auramine	Auramine	492-80-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U015	Azaserine	Azaserine	115-02-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U016	Benz(c)acridine	Benz(c)acridine	225-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U017	Benzal chloride	Benzal chloride	98-87-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U018	Benz(a)anthracene	Benz(a)anthracene	56-55-3	0.059	3.4
U019	Benzene	Benzene	71-43-2	0.14	10
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98-09-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U021	Benzidine	Benzidine	92-87-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U022	Benzo(a)pyrene	Benzo(a)pyrene	50-32-8	0.061	3.4

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U023	Benzotrifluoride	Benzotrifluoride	98-07-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U024	bis(2-Chloroethoxy)methane	bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
U025	bis(2-Chloroethyl)ether	bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
U026	Chloromaphazine	Chloromaphazine	494-03-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U027	bis(2-Chloroisopropyl)ether	bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
U028	bis(2-Ethylhexyl) phthalate	bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28
U029	Methyl bromide (Bromomethane)	Methyl bromide (Bromomethane)	74-83-9	0.11	15
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101-55-3	0.055	15
U031	n-Butyl alcohol	n-Butyl alcohol	71-36-3	5.6	2.6
U032	Calcium chromate	Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
U033	Carbon oxyfluoride	Carbon oxyfluoride	353-50-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75-87-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U035	Chlorambucil	Chlorambucil	305-03-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U036	Chlordane	Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
U037	Chlorobenzene	Chlorobenzene	108-90-7	0.057	6.0
U038	Chlorobenzilate	Chlorobenzilate	510-15-6	0.10	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	59-50-7	0.018	14
U041	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106-89-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U042	2-Chloroethyl vinyl ether	2-Chloroethyl vinyl ether	110-75-8	0.062	CMBST
U043	Vinyl chloride	Vinyl chloride	75-01-4	0.27	6.0
U044	Chloroform	Chloroform	67-66-3	0.046	6.0
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74-87-3	0.19	30
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107-30-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U047	2-Chloronaphthalene	2-Chloronaphthalene	91-58-7	0.055	5.6
U048	2-Chlorophenol	2-Chlorophenol	95-57-8	0.044	5.7
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165-93-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U050	Chrysene	Chrysene	218-01-9	0.059	3.4
U051	Creosote	Naphthalene	91-20-3	0.059	5.6
		Pentachlorophenol	87-86-5	0.089	7.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Toluene	108-88-3	0.080	10
		Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
		Lead	7439-92-1	0.69	0.37 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U052	Cresols (Cresylic acid)	o-Cresol	95-48-7	0.11	5.6
		m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
		p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
		Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88	11.2
U053	Crotonaldehyde	Crotonaldehyde	4170-30-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U055	Cumene	Cumene	98-82-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U056	Cyclohexane	Cyclohexane	110-82-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	CMBST
		Cyclohexanone; alternate ⁶ standard for nonwastewaters only	108-94-1	NA	0.75 mg/l TCLP
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN; or CMBST	CMBST
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U060	DDD	o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
U061	DDT	o,p'-DDT	789-02-6	0.0039	0.087

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
		p,p'-DDT	50-29-3	0.0039	0.087
		o,p'-DDD	53-19-0	0.023	0.087
		p,p'-DDD	72-54-8	0.023	0.087
		o,p'-DDE	3424-82-6	0.031	0.087
		p,p'-DDE	72-55-9	0.031	0.087
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U063	Dibenz(a,h)anthracene	Dibenz(a,h)anthracene	53-70-3	0.055	8.2
U064	Dibenz(a,i)pyrene	Dibenz(a,i)pyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
U067	Ethylene dibromide (1,2-Dibromoethane)	Ethylene dibromide (1,2-Dibromoethane)	106-93-4	0.028	15
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	15
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	28
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	6.0
U071	m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	6.0
U072	p-Dichlorobenzene	p-Dichlorobenzene	106-46-7	0.090	6.0
U073	3,3'-Dichlorobenzidine	3,3'-Dichlorobenzidine	91-94-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U074	1,4-Dichloro-2-butene	cis-1,4-Dichloro-2-butene	1476-11-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		trans-1,4-Dichloro-2-butene	764-41-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U075	Dichlorodifluoromethane	Dichlorodifluoromethane	75-71-8	0.23	7.2
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	6.0
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	6.0
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	6.0
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-60-5	0.054	30
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	30
U081	2,4-Dichlorophenol	2,4-Dichlorophenol	120-83-2	0.044	14
U082	2,6-Dichlorophenol	2,6-Dichlorophenol	87-65-0	0.044	14
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	18
U084	1,3-Dichloropropylene	cis-1,3-Dichloropropylene	10061-01-5	0.036	18
		trans-1,3-Dichloropropylene	10061-02-6	0.036	18
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U086	N,N'-Diethylhydrazine	N,N'-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U087	O,O-Diethyl S-methyldithiophosphate	O,O-Diethyl S-methyldithiophosphate	3288-58-2	CARBN; or CMBST	CMBST
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.20	28
U089	Diethyl stilbestrol	Diethyl stilbestrol	56-53-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U090	Dihydrosafrole	Dihydrosafrole	94-58-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxybenzidine	119-90-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U092	Dimethylamine	Dimethylamine	124-40-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U093	p-Dimethylaminoazobenzene	p-Dimethylaminoazobenzene	60-11-7	0.13	CMBST
U094	7,12-Dimethyl/benz(a)anthracene	7,12-Dimethyl/benz(a)anthracene	57-97-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U095	3,3'-Dimethylbenzidine	3,3'-Dimethylbenzidine	119-93-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U096	alpha, alpha-Dimethyl benzyl hydroperoxide	alpha, alpha-Dimethyl benzyl hydroperoxide	80-15-9	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U097	Dimethylcarbamoyl chloride	Dimethylcarbamoyl chloride	79-44-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57-14-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540-73-8	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105-67-9	0.036	14
U102	Dimethyl phthalate	Dimethyl phthalate	131-11-3	0.047	28
U103	Dimethyl sulfate	Dimethyl sulfate	77-78-1	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121-14-2	0.32	140
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606-20-2	0.55	28

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117-84-0	0.017	28
U108	1,4-Dioxane	1,4-Dioxane	123-91-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		1,4-Dioxane; alternate ⁶ standard for nonwastewaters only	123-91-1	NA	170
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122-66-7	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
		1,2-Diphenylhydrazine; alternate ⁶ standard for wastewaters only	122-66-7	0.087	NA
U110	Dipropylamine	Dipropylamine	142-84-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U111	Di-n-propylnitrosamine	Di-n-propylnitrosamine	621-64-7	0.40	14
U112	Ethyl acetate	Ethyl acetate	141-78-6	0.34	33
U113	Ethyl acrylate	Ethyl acrylate	140-88-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U114	Ethylenebisdithiocarbamic acid salts and esters	Ethylenebisdithiocarbamic acid	111-54-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U115	Ethylene oxide	Ethylene oxide	75-21-8	(WETOX or CHOXD) fb CARBN; or CMBST	CHOXD; or CMBST
		Ethylene oxide; alternate ⁶ standard for wastewaters only	75-21-8	0.12	NA
U116	Ethylene thiourea	Ethylene thiourea	96-45-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U117	Ethyl ether	Ethyl ether	60-29-7	0.12	160
U118	Ethyl methacrylate	Ethyl methacrylate	97-63-2	0.14	160
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62-50-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U120	Fluoranthene	Fluoranthene	206-44-0	0.068	3.4
U121	Trichloromonofluoromethane	Trichloromonofluoromethane	75-69-4	0.020	30
U122	Formaldehyde	Formaldehyde	50-00-0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U123	Formic acid	Formic acid	64-18-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U124	Furan	Furan	110-00-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U125	Furfural	Furfural	98-01-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U126	Glycidylaldehyde	Glycidylaldehyde	765-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U127	Hexachlorobenzene	Hexachlorobenzene	118-74-1	0.055	10
U128	Hexachlorobutadiene	Hexachlorobutadiene	87-68-3	0.055	5.6
U129	Lindane	alpha-BHC	319-84-6	0.00014	0.066
		beta-BHC	319-85-7	0.00014	0.066
		delta-BHC	319-86-8	0.023	0.066
		gamma-BHC (Lindane)	58-89-9	0.0017	0.066
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4	0.057	2.4
U131	Hexachloroethane	Hexachloroethane	67-72-1	0.055	30

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP", or Technology Code ⁴
U132	Hexachlorophene	Hexachlorophene	70-30-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U133	Hydrazine	Hydrazine	302-01-2	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U134	Hydrogen fluoride	Fluoride (measured in wastewaters only)	16964-48-8	35	ADGAS fb NEUTR; or NEUTR
U135	Hydrogen Sulfide	Hydrogen Sulfide	7783-06-4	CHOXD; CHRED, or CMBST	CHOXD; CHRED; or CMBST
U136	Cacodylic acid	Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
U138	Iodomethane	Iodomethane	74-88-4	0.19	65
U140	Isobutyl alcohol	Isobutyl alcohol	78-83-1	5.6	170
U141	Isosafrole	Isosafrole	120-58-1	0.081	2.6
U142	Kepone	Kepone	143-50-8	0.0011	0.13
U143	Lasiocarpine	Lasiocarpine	303-34-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U144	Lead acetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U145	Lead phosphate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U146	Lead subacetate	Lead	7439-92-1	0.69	0.37 mg/l TCLP
U147	Maleic anhydride	Maleic anhydride	108-31-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U148	Maleic hydrazide	Maleic hydrazide	123-33-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U149	Malononitrile	Malononitrile	109-77-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U150	Melphalan	Melphalan	148-82-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U151	U151 (mercury) nonwastewaters that contain greater than or equal to 260 mg/kg total mercury.	Mercury	7439-97-6	NA	RMERC
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are residues from RMERC only.	Mercury	7439-97-6	NA	0.20 mg/l TCLP
	U151 (mercury) nonwastewaters that contain less than 260 mg/kg total mercury and that are not residues from RMERC.	Mercury	7439-97-6	NA	0.025 mg/l TCLP
	All U151 (mercury) wastewaters.	Mercury	7439-97-6	0.15	NA
	Elemental Mercury Contaminated with Radioactive Materials	Mercury	7439-97-6	NA	AMLGM
U152	Methacrylonitrile	Methacrylonitrile	126-98-7	0.24	84
U153	Methanethiol	Methanethiol	74-93-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U154	Methanol	Methanol	67-56-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
	Methanol; alternate ⁶ set of standards for both wastewaters and nonwastewaters		67-56-1	5.6	0.75 mg/l TCLP
U155	Methapyrilene	Methapyrilene	91-80-5	0.081	1.5
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79-22-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U157	3-Methylcholanthrene	3-Methylcholanthrene	56-49-5	0.0055	15
U158	4,4'-Methylene bis(2-chloroaniline)	4,4'-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
U159	Methyl ethyl ketone	Methyl ethyl ketone	78-93-3	0.28	36
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338-23-4	CHOXD; CHRED; CARBN; BIODG; or CMBST	CHOXD; CHRED; or CMBST
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108-10-1	0.14	33
U162	Methyl methacrylate	Methyl methacrylate	80-62-6	0.14	160
U163	N-Methyl N'-nitro N-nitrosoguanidine	N-Methyl N'-nitro N-nitrosoguanidine	70-25-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U164	Methylthiouracil	Methylthiouracil	56-04-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U165	Naphthalene	Naphthalene	91-20-3	0.059	5.6
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130-15-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U167	1-Naphthylamine	1-Naphthylamine	134-32-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U168	2-Naphthylamine	2-Naphthylamine	91-59-8	0.52	CMBST
U169	Nitrobenzene	Nitrobenzene	98-95-3	0.068	14
U170	p-Nitrophenol	p-Nitrophenol	100-02-7	0.12	29
U171	2-Nitropropane	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U172	N-Nitrosodi-n-butylamine	N-Nitrosodi-n-butylamine	924-16-3	0.40	17

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WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U173	N-Nitrosodiethanolamine	N-Nitrosodiethanolamine	1116-54-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U174	N-Nitrosodiethylamine	N-Nitrosodiethylamine	55-18-5	0.40	28
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759-73-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684-93-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615-53-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U179	N-Nitrosopiperidine	N-Nitrosopiperidine	100-75-4	0.013	35
U180	N-Nitrosopyrrolidine	N-Nitrosopyrrolidine	930-55-2	0.013	35
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99-55-8	0.32	28
U182	Paraldehyde	Paraldehyde	123-63-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U183	Pentachlorobenzene	Pentachlorobenzene	608-93-5	0.055	10
U184	Pentachloroethane	Pentachloroethane	76-01-7	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Pentachloroethane; alternate ⁶ standards for both wastewaters and nonwastewaters	76-01-7	0.055	6.0
U185	Pentachloronitrobenzene	Pentachloronitrobenzene	82-68-8	0.055	4.8
U186	1,3-Pentadiene	1,3-Pentadiene	504-60-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U187	Phenacetin	Phenacetin	62-44-2	0.081	16
U188	Phenol	Phenol	108-95-2	0.039	6.2

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U189	Phosphorus sulfide	Phosphorus sulfide	1314-80-3	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U190	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	100-21-0	0.055	28
		Phthalic anhydride (measured as Phthalic acid or Terephthalic acid)	85-44-9	0.055	28
U191	2-Picoline	2-Picoline	109-06-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U192	Pronamide	Pronamide	23950-58-5	0.093	1.5
U193	1,3-Propane sultone	1,3-Propane sultone	1120-71-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U194	n-Propylamine	n-Propylamine	107-10-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U196	Pyridine	Pyridine	110-86-1	0.014	16
U197	p-Benzoquinone	p-Benzoquinone	106-51-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U200	Reserpine	Reserpine	50-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U201	Resorcinol	Resorcinol	108-46-3	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U202	Saccharin and salts	Saccharin	81-07-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U203	Safrrole	Safrrole	94-59-7	0.081	22
U204	Selenium dioxide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ , or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U205	Selenium sulfide	Selenium	7782-49-2	0.82	0.16 mg/l TCLP
U206	Streptozotocin	Streptozotocin	18883-86-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
U210	Tetrachloroethylene	Tetrachloroethylene	127-18-4	0.056	6.0
U211	Carbon tetrachloride	Carbon tetrachloride	56-23-5	0.057	6.0
U213	Tetrahydrofuran	Tetrahydrofuran	109-99-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U214	Thallium (I) acetate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U215	Thallium (I) carbonate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U216	Thallium (I) chloride	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U217	Thallium (I) nitrate	Thallium (measured in wastewaters only)	7440-28-0	1.4	RTHRM; or STABL
U218	Thioacetamide	Thioacetamide	62-55-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U219	Thiourea	Thiourea	62-56-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U220	Toluene	Toluene	108-88-3	0.080	10
U221	Toluenediamine	Toluenediamine	25376-45-8	CARBN; or CMBST	CMBST

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636-21-5	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U223	Toluene diisocyanate	Toluene diisocyanate	26471-62-5	CARBN; or CMBST	CMBST
U225	Bromoform (Tribromomethane)	Bromoform (Tribromomethane)	75-25-2	0.63	15
U226	1,1,1-Trichloroethane	1,1,1-Trichloroethane	71-55-6	0.054	6.0
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79-00-5	0.054	6.0
U228	Trichloroethylene	Trichloroethylene	79-01-6	0.054	6.0
U234	1,3,5-Trinitrobenzene	1,3,5-Trinitrobenzene	99-35-4	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U235	tris-(2,3-Dibromopropyl)-phosphate	tris-(2,3-Dibromopropyl)-phosphate	126-72-7	0.11	0.10
U236	Trypan Blue	Trypan Blue	72-57-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U237	Uracil mustard	Uracil mustard	66-75-1	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U238	Urethane (Ethyl carbamate)	Urethane (Ethyl carbamate)	51-79-6	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U239	Xylenes	Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
U240	2,4-D (2,4-Dichlorophenoxyacetic acid)	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	0.72	10
	2,4-D (2,4-Dichlorophenoxyacetic acid) salts and esters		NA	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U243	Hexachloropropylene	Hexachloropropylene	1888-71-7	0.035	30

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U244	Thiram	Thiram	137-26-8	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U246	Cyanogen bromide	Cyanogen bromide	506-68-3	CHOXD; WETOX; or CMBST	CHOXD; WETOX; or CMBST
U247	Methoxychlor	Methoxychlor	72-43-5	0.25	0.18
U248	Warfarin, & salts, when present at concentrations of 0.3% or less	Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
U249	Zinc phosphide, Zn ₃ P ₂ , when present at concentrations of 10% or less	Zinc Phosphide	1314-84-7	CHOXD; CHRED; or CMBST	CHOXD; CHRED; or CMBST
U271	Benomyl ¹⁰	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb ¹⁰	Bendiocarb	22781-23-3	0.056	1.4
U279	Carbaryl ¹⁰	Carbaryl	63-25-2	0.006	0.14
U280	Barban ¹⁰	Barban	101-27-9	0.056	1.4
U328	o-Toluidine	o-Toluidine	95-53-4	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN.	CMBST
U353	p-Toluidine	p-Toluidine	106-49-0	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U359	2-Ethoxyethanol	2-Ethoxyethanol	110-80-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST
U364	Bendiocarb phenol ¹⁰	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol ¹⁰	Carbofuran phenol	1563-38-8	0.056	1.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES NOTE: NA means not applicable					
WASTE CODE	WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹	REGULATED HAZARDOUS CONSTITUENT		WASTEWATERS	NONWASTEWATERS
		Common Name	CAS ² Number	Concentration in mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴
U372	Carbendazim ¹⁰	Carbendazim	10605-21-7	0.056	1.4
U373	Propham ¹⁰	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb ¹⁰	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate ¹⁰	Triallate	2303-17-5	0.042	1.4
U394	A2213 ¹⁰	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate ¹⁰	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine ¹⁰	Triethylamine	101-44-8	0.081	1.5
U409	Thiophanate-methyl ¹⁰	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb ¹⁰	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur ¹⁰	Propoxur	114-26-1	0.056	1.4

FOOTNOTES TO TREATMENT STANDARDS TABLE 268.40:

- 1 The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.
- 2 CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
- 3 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.
- 4 All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in §268.42 Table 1 - Technology Codes and Descriptions of Technology-Based Standards.
- 5 Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in §268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.
- 6 Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.
- 7 Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.
- 8 These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems are not subject to treatment standards. (See §268.1(c)(3) and (4)).
- 9 These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See 40 CFR 148.1(d)).
- 10 Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at §268.42 Table 1 of this part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at §268.42 Table 1 of this part, for wastewaters.

3. In § 268.48, the table "Universal Treatment Standards" in paragraph (a) is revised to read as follows:

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable.]

Regulated constituent common name	CAS ¹ number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l ²	Concentration in mg/kg ³ unless noted as "mg/l TCLP"
I. Organic Constituents:			
A2213 ⁶	30558-43-1	0.042	1.4
Acenaphthylene	208-96-8	0.059	3.4
Acenaphthene	83-32-9	0.059	3.4
Acetone	67-64-1	0.28	160
Acetonitrile	75-05-8	5.6	38
Acetophenone	96-86-2	0.010	9.7
2-Acetylaminofluorene	53-96-3	0.059	140
Acrolein	107-02-8	0.29	NA
Acrylamide	79-06-1	19	23
Acrylonitrile	107-13-1	0.24	84
Aldicarb sulfone ⁶	1646-88-4	0.056	0.28
Aldrin	309-00-2	0.021	0.066
4-Aminobiphenyl	92-67-1	0.13	NA
Aniline	62-53-3	0.81	14
Anthracene	120-12-7	0.059	3.4
Aramite	140-57-8	0.36	NA
alpha-BHC	319-84-6	0.00014	0.066
beta-BHC	319-85-7	0.00014	0.066
delta-BHC	319-86-8	0.023	0.066
gamma-BHC	58-89-9	0.0017	0.066
Barban ⁶	101-27-9	0.056	1.4
Bendiocarb ⁶	22781-23-3	0.056	1.4
Bendiocarb phenol ⁶	22961-82-6	0.056	1.4
Benomyl ⁶	17804-35-2	0.056	1.4
Benzene	71-43-2	0.14	10
Benz(a)anthracene	56-55-3	0.059	3.4
Benzal chloride	98-87-3	0.055	6.0
Benzo(b)fluoranthene (difficult to distinguish from benzo(k)fluoranthene)	205-99-2	0.11	6.8
Benzo(k)fluoranthene (difficult to distinguish from benzo(b)fluor-anthene)	207-08-9	0.11	6.8
Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
Benzo(a)pyrene	50-32-8	0.061	3.4
Bromodichloromethane	75-27-4	0.35	15
Bromomethane/Methyl bromide	74-83-9	0.11	15
4-Bromophenyl phenyl ether	101-55-3	0.055	15
n-Butyl alcohol	71-36-3	5.6	2.6
Butylate ⁶	2008-41-5	0.042	1.4
Butyl benzyl phthalate	85-68-7	0.017	28
2-sec-Butyl-4,6-dinitrophenol/Dinoseb	88-85-7	0.066	2.5
Carbaryl ⁶	63-25-2	0.006	0.14
Carbenzadim ⁶	10605-21-7	0.056	1.4
Carbofuran ⁶	1563-66-2	0.006	0.14
Carbofuran phenol ⁶	1563-38-8	0.056	1.4
Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
Carbon tetrachloride	56-23-5	0.057	6.0
Carbosulfan ⁶	55285-14-8	0.028	1.4
Chlordane (alpha and gamma isomers)	57-74-9	0.0033	0.26
p-Chloroaniline	106-47-8	0.46	16
Chlorobenzene	108-90-7	0.057	6.0
Chlorobenzilate	510-15-6	0.10	NA
2-Chloro-1,3-butadiene	126-99-8	0.057	0.28
Chlorodibromomethane	124-48-1	0.057	15
Chloroethane	75-00-3	0.27	6.0
bis(2-Chloroethoxy)methane	111-91-1	0.036	7.2
bis(2-Chloroethyl)ether	111-44-4	0.033	6.0
Chloroform	67-66-3	0.046	6.0
bis(2-Chloroisopropyl)ether	39638-32-9	0.055	7.2
p-Chloro-m-cresol	59-50-7	0.018	14
2-Chloroethyl vinyl ether	110-75-8	0.062	NA
Chloromethane/Methyl chloride	74-87-3	0.19	30
2-Chloronaphthalene	91-58-7	0.055	5.6

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS ¹ number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l ²	Concentration in mg/kg ³ unless noted as "mg/l TCLP"
2-Chlorophenol	95-57-8	0.044	5.7
3-Chloropropylene	107-05-1	0.036	30
Chrysene	218-01-9	0.059	3.4
o-Cresol	95-48-7	0.11	5.6
m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77	5.6
p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77	5.6
m-Cumenyl methylcarbamate ⁶	64-00-6	0.056	1.4
Cyclohexanone	108-94-1	0.36	0.75 mg/l TCLP
o,p'-DDD	53-19-0	0.023	0.087
p,p'-DDD	72-54-8	0.023	0.087
o,p'-DDE	3424-82-6	0.031	0.087
p,p'-DDE	72-55-9	0.031	0.087
o,p'-DDT	789-02-6	0.0039	0.087
p,p'-DDT	50-29-3	0.0039	0.087
Dibenz(a,h)anthracene	53-70-3	0.055	8.2
Dibenz(a,e)pyrene	192-65-4	0.061	NA
1,2-Dibromo-3-chloropropane	96-12-8	0.11	15
1,2-Dibromoethane/Ethylene dibromide	106-93-4	0.028	15
Dibromomethane	74-95-3	0.11	15
m-Dichlorobenzene	541-73-1	0.036	6.0
o-Dichlorobenzene	95-50-1	0.088	6.0
p-Dichlorobenzene	106-46-7	0.090	6.0
Dichlorodifluoromethane	75-71-8	0.23	7.2
1,1-Dichloroethane	75-34-3	0.059	6.0
1,2-Dichloroethane	107-06-2	0.21	6.0
1,1-Dichloroethylene	75-35-4	0.025	6.0
trans-1,2-Dichloroethylene	156-60-5	0.054	30
2,4-Dichlorophenol	120-83-2	0.044	14
2,6-Dichlorophenol	87-65-0	0.044	14
2,4-Dichlorophenoxyacetic acid/2,4-D	94-75-7	0.72	10
1,2-Dichloropropane	78-87-5	0.85	18
cis-1,3-Dichloropropylene	10061-01-5	0.036	18
trans-1,3-Dichloropropylene	10061-02-6	0.036	18
Dieldrin	60-57-1	0.017	0.13
Diethylene glycol, dicarbamate ⁶	5952-26-1	0.056	1.4
Diethyl phthalate	84-66-2	0.20	28
p-Dimethylaminoazobenzene	60-11-7	0.13	NA
2-4-Dimethyl phenol	105-67-9	0.036	14
Dimethyl phthalate	131-11-3	0.047	28
Dimetilan ⁶	644-64-4	0.056	1.4
Di-n-butyl phthalate	84-74-2	0.057	28
1,4-Dinitrobenzene	100-25-4	0.32	2.3
4,6-Dinitro-o-cresol	534-52-1	0.28	160
2,4-Dinitrophenol	51-28-5	0.12	160
2,4-Dinitrotoluene	121-14-2	0.32	140
2,6-Dinitrotoluene	606-20-2	0.55	28
Di-n-octyl phthalate	117-84-0	0.017	28
Di-n-propylnitrosamine	621-64-7	0.40	14
1,4-Dioxane	123-91-1	12.0	170
Diphenylamine (difficult to distinguish from diphenylnitrosamine)	122-39-4	0.92	13
Diphenylnitrosamine (difficult to distinguish from diphenylamine)	86-30-6	0.92	13
1,2-Diphenylhydrazine	122-66-7	0.087	NA
Disulfoton	298-04-4	0.017	6.2
Dithiocarbamates (total) ⁶	137-30-4	0.028	28
Endosulfan I	959-98-8	0.023	0.066
Endosulfan II	33213-65-9	0.029	0.13
Endosulfan sulfate	1031-07-8	0.029	0.13
Endrin	72-20-8	0.0028	0.13
Endrin aldehyde	7421-93-4	0.025	0.13
EPTC ⁶	759-94-4	0.042	1.4
Ethyl acetate	141-78-6	0.34	33
Ethyl benzene	100-41-4	0.057	10
Ethyl cyanide/Propanenitrile	107-12-0	0.24	360
Ethyl ether	60-29-7	0.12	160
bis(2-Ethylhexyl) phthalate	117-81-7	0.28	28

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS ¹ number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l ²	Concentration in mg/kg ³ unless noted as "mg/l TCLP"
Ethyl methacrylate	97-63-2	0.14	160
Ethylene oxide	75-21-8	0.12	NA
Famphur	52-85-7	0.017	15
Fluoranthene	206-44-0	0.068	3.4
Fluorene	86-73-7	0.059	3.4
Formetanate hydrochloride ⁶	23422-53-9	0.056	1.4
Formparanate ⁶	17702-57-7	0.056	1.4
Heptachlor	76-44-8	0.0012	0.066
Heptachlor epoxide	1024-57-3	0.016	0.066
Hexachlorobenzene	118-74-1	0.055	10
Hexachlorobutadiene	87-68-3	0.055	5.6
Hexachlorocyclopentadiene	77-47-4	0.057	2.4
HxCDDs (All Hexachlorodibenzo-p-dioxins)	NA	0.000063	0.001
HxCDFs (All Hexachlorodibenzo-furans)	NA	0.000063	0.001
Hexachloroethane	67-72-1	0.055	30
Hexachloropropylene	1888-71-7	0.035	30
Indeno (1,2,3-c,d) pyrene	193-39-5	0.0055	3.4
Iodomethane	74-88-4	0.19	65
Isobutyl alcohol	78-83-1	5.6	170
Isodrin	465-73-6	0.021	0.066
Isolan ⁶	119-38-0	0.056	1.4
Isosafrole	120-58-1	0.081	2.6
Kepone	143-50-0	0.0011	0.13
Methacrylonitrile	126-98-7	0.24	84
Methanol	67-56-1	5.6	0.75 mg/l TCLP
Methapyrilene	91-80-5	0.081	1.5
Methiocarb ⁶	2032-65-7	0.056	1.4
Methomyl ⁶	16752-77-5	0.028	0.14
Methoxychlor	72-43-5	0.25	0.18
3-Methylcholanthrene	56-49-5	0.0055	15
4,4-Methylene bis(2-chloroaniline)	101-14-4	0.50	30
Methylene chloride	75-09-2	0.089	30
Methyl ethyl ketone	78-93-3	0.28	36
Methyl isobutyl ketone	108-10-1	0.14	33
Methyl methacrylate	80-62-6	0.14	160
Methyl methansulfonate	66-27-3	0.018	NA
Methyl parathion	298-00-0	0.014	4.6
Metolcarb ⁶	1129-41-5	0.056	1.4
Mexacarbate ⁶	315-18-4	0.056	1.4
Molinate ⁶	2212-67-1	0.042	1.4
Naphthalene	91-20-3	0.059	5.6
2-Naphthylamine	91-59-8	0.52	NA
o-Nitroaniline	88-74-4	0.27	14
p-Nitroaniline	100-01-6	0.028	28
Nitrobenzene	98-95-3	0.068	14
5-Nitro-o-toluidine	99-55-8	0.32	28
o-Nitrophenol	88-75-5	0.028	13
p-Nitrophenol	100-02-7	0.12	29
N-Nitrosodiethylamine	55-18-5	0.40	28
N-Nitrosodimethylamine	62-75-9	0.40	2.3
N-Nitroso-di-n-butylamine	924-16-3	0.40	17
N-Nitrosomethylethylamine	10595-95-6	0.40	2.3
N-Nitrosomorpholine	59-89-2	0.40	2.3
N-Nitrosopiperidine	100-75-4	0.013	35
N-Nitrosopyrrolidine	930-55-2	0.013	35
Oxamyl ⁶	23135-22-0	0.056	0.28
Parathion	56-38-2	0.014	4.6
Total PCBs (sum of all PCB isomers, or all Aroclors)	1336-36-3	0.10	10
Pebulate ⁶	1114-71-2	0.042	1.4
Pentachlorobenzene	608-93-5	0.055	10
PeCDDs (All Pentachlorodibenzo-p-dioxins)	NA	0.000063	0.001
PeCDFs (All Pentachlorodibenzo-furans)	NA	0.000035	0.001
Pentachloroethane	76-01-7	0.055	6.0
Pentachloronitrobenzene	82-68-8	0.055	4.8
Pentachlorophenol	87-86-5	0.089	7.4

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS ¹ number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l ²	Concentration in mg/kg ³ unless noted as "mg/l TCLP"
Phenacetin	62-44-2	0.081	16
Phenanthrene	85-01-8	0.059	5.6
Phenol	108-95-2	0.039	6.2
o-Phenylenediamine ⁶	95-54-5	0.056	5.6
Phorate	298-02-2	0.021	4.6
Phthalic acid	100-21-0	0.055	28
Phthalic anhydride	85-44-9	0.055	28
Physostigmine ⁶	57-47-6	0.056	1.4
Physostigmine salicylate ⁶	57-64-7	0.056	1.4
Promecarb ⁶	2631-37-0	0.056	1.4
Pronamide	23950-58-5	0.093	1.5
Propham ⁶	122-42-9	0.056	1.4
Propoxur ⁶	114-26-1	0.056	1.4
Prosulfocarb ⁶	52888-80-9	0.042	1.4
Pyrene	129-00-0	0.067	8.2
Pyridine	110-86-1	0.014	16
Safrole	94-59-7	0.081	22
Silvex/2,4,5-TP	93-72-1	0.72	7.9
1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	14
TCDDs (All Tetrachlorodi-benzo-p-dioxins)	NA	0.000063	0.001
TCDFs (All Tetrachlorodibenzofurans)	NA	0.000063	0.001
1,1,1,2-Tetrachloroethane	630-20-6	0.057	6.0
1,1,2,2-Tetrachloroethane	79-34-5	0.057	6.0
Tetrachloroethylene	127-18-4	0.056	6.0
2,3,4,6-Tetrachlorophenol	58-90-2	0.030	7.4
Thiodicarb ⁶	59669-26-0	0.019	1.4
Thiophanate-methyl ⁶	23564-05-8	0.056	1.4
Tirpate ⁶	26419-73-8	0.056	0.28
Toluene	108-88-3	0.080	10
Toxaphene	8001-35-2	0.0095	2.6
Triallate ⁶	2303-17-5	0.042	1.4
Tribromomethane/Bromoform	75-25-2	0.63	15
1,2,4-Trichlorobenzene	120-82-1	0.055	19
1,1,1-Trichloroethane	71-55-6	0.054	6.0
1,1,2-Trichloroethane	79-00-5	0.054	6.0
Trichloroethylene	79-01-6	0.054	6.0
Trichloromonofluoromethane	75-69-4	0.020	30
2,4,5-Trichlorophenol	95-95-4	0.18	7.4
2,4,6-Trichlorophenol	88-06-2	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid/2,4,5-T	93-76-5	0.72	7.9
1,2,3-Trichloropropane	96-18-4	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	0.057	30
Triethylamine ⁶	101-44-8	0.081	1.5
tris-(2,3-Dibromopropyl) phosphate	126-72-7	0.11	0.10
Vernolate ⁶	1929-77-7	0.042	1.4
Vinyl chloride	75-01-4	0.27	6.0
Xylenes-mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330-20-7	0.32	30
II. Inorganic Constituents:			
Antimony	7440-36-0	1.9	2.1 mg/l TCLP
Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
Barium	7440-39-3	1.2	7.6 mg/l TCLP
Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
Cyanides (Total) ⁴	57-12-5	1.2	590
Cyanides (Amenable) ⁴	57-12-5	0.86	30
Fluoride ⁵	16984-48-8	35	NA
Lead	7439-92-1	0.69	0.37 mg/l TCLP
Mercury—Nonwastewater from Retort	7439-97-6	NA	0.20 mg/l TCLP
Mercury—All Others	7439-97-6	0.15	0.025 mg/l TCLP
Nickel	7440-02-0	3.98	5.0 mg/l TCLP
Selenium	7782-49-2	0.82	0.16 mg/l TCLP
Silver	7440-22-4	0.43	0.30 mg/l TCLP

UNIVERSAL TREATMENT STANDARDS—Continued

[Note: NA means not applicable.]

Regulated constituent common name	CAS ¹ number	Wastewater standard	Nonwastewater standard
		Concentration in mg/l ²	Concentration in mg/kg ³ unless noted as "mg/l TCLP"
Sulfide	18496–25–8	14	NA
Thallium	7440–28–0	1.4	0.078 mg/l TCLP
Vanadium ⁵	7440–62–2	4.3	0.23 mg/l TCLP
Zinc ⁵	7440–66–6	2.61	5.3 mg/l TCLP

Footnotes to Universal Treatment Standards Table:

¹CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.⁴⁴

²Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

³Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in § 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

⁴Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

⁵These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at § 268.2(i).

⁶Between August 26, 1996, and August 26, 1997, these constituents are not "underlying hazardous constituents" as defined at § 268.2(i).

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Part III

Department of Agriculture

Farm Service Agency
Commodity Credit Corporation

7 CFR Parts 704 and 1410
Conservation Reserve Program—Long-
Term Policy; Final Rule

DEPARTMENT OF AGRICULTURE**Farm Service Agency****Commodity Credit Corporation****7 CFR Parts 704 and 1410**

RIN 0560-AE95

**Conservation Reserve Program—
Long-Term Policy****AGENCY:** Farm Service Agency and Commodity Credit Corporation, USDA.**ACTION:** Final rule.

SUMMARY: This final rule amends the Conservation Reserve Program (CRP) regulations to: Revise the terms and conditions for enrolling acreage in the CRP; update other program eligibility requirements; consolidate and reorganize all existing CRP regulations into one regulation; and eliminate unnecessary provisions. This action is being taken to cost-effectively target the CRP to more environmentally sensitive acreage. This action is also part of the National Performance Review Initiative to eliminate unnecessary regulations and improve those that remain in force.

EFFECTIVE DATE: This regulation is effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Zavodny, 202-720-7333, or via E-mail at webmaster@wdc.fsa.usda.gov or on the FSA home page at <http://www.fsa.usda.gov/>.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This final rule has been determined to be Economically Significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Benefit/Cost Analysis

To comply with Executive Order 12866, USDA prepared a benefit/cost analysis for the final rule. It analyzes the economic, environmental, and budgetary impacts of three alternative CRP enrollment scenarios. The first scenario assumes the maximum permitted enrollment level, 36.4 million acres. The second scenario assumes an enrollment level of 28.0 million acres. This level corresponds to the enrollment scenario included in the FY 1997 President's Budget Baseline that was published prior to enactment of the 1996 Act. The final scenario presents estimates of the enrollment situation that would occur if enrollment authority for new acreage had not been provided in amendments to the Food Security Act of 1985 (the 1985 Act) by the 1996 Act and no existing contracts are extended.

Under this scenario, the expiration of existing contracts would result in an estimated decline in enrollment to 1.7 million acres by 2002.

Establishment of long-term vegetative cover on cropland reduces soil erosion and the quantity of soil and other agricultural pollutants that may reach water bodies and impair water uses. Proper CRP cover practices in certain areas of the Northern Plains and Mountain regions are extremely important to waterfowl and grassland bird species, both of which have experienced significant reductions in numbers until recent years. Enrollment of environmentally sensitive areas such as flood-prone and riparian acres benefits wildlife and water quality by providing cover for protection, moderation of the temperatures of streams and other water bodies, food sources for wildlife, and protection of waterbodies from sediment, pesticide, and nutrient pollution. Environmental benefits are also enhanced by enrollment of wetlands and associated uplands, and enrollment of habitats important to threatened and endangered species.

Comprehensive measures of the value of the environmental benefits obtained from enrolling environmentally sensitive acreage do not currently exist. Estimates reported in the literature for acreage currently enrolled in the program are mostly based on indirect measures or secondary sources. Such estimates could be used to provide rough approximations of the potential value of the benefits to be realized from the alternative enrollment level scenarios, but must be discussed with a great deal of caution and qualification. Some of the environmental benefits that have been estimated and applied to the CRP enrollment scenarios include: soil productivity (\$150 million annually for the 28.0-million-acre scenario and \$195 million annually for the 36.4-million-acre scenario), improved water quality (\$350 million and \$455 million, respectively), and increased consumptive and non-consumptive uses of wildlife (\$1.5 billion and \$2.0 billion, respectively). The sum of these 3 categories, which would only be a partial accounting of the environmental benefits, is \$2.0 billion per year and \$2.7 billion per year, for the 28.0-million-acre and 36.4-million-acre scenarios, respectively.

Enrollment of 28.0 million acres and 36.4 million acres is expected to increase annual net farm income from production of feedgrains, wheat, cotton, and soybeans, CRP payments, and production flexibility contract payments by about \$5.8 billion and \$7.6 billion,

respectively, compared with the no CRP continuation scenario. The increased net farm income results from higher commodity prices, reduced production expenses, and higher CRP rental payments to participants. Compared with the no continuation scenario, corn, wheat, and soybean prices each average about 9 percent, 8 percent, and 11 percent higher, respectively under the 28.0-million-acre scenario, and about 12 percent, 15 percent, and 13 percent higher under the 36.4-million-acre scenario.

Average annual CRP outlays under the 28.0-million-acre and 36.4-million-acre options average about \$1.1 billion and \$1.2 billion, respectively, higher than under the no continuation scenario.

Because enrollment in CRP reduces planted acreage and commodity production and increases commodity prices, projected annual expenditures for feedgrains, wheat, cotton, and soybeans are estimated to be \$3.7 billion and \$4.9 billion higher with enrollment at the 28.0-million-acre and 36.4-million-acre levels, respectively, relative to the no continuation scenario for domestic purchasers. For foreign purchasers, average annual expenditures are \$1.9 billion and \$2.6 billion higher. Thus, impacts on commodity expenditures for all purchasers is about \$5.6 billion and \$7.5 billion annually. Consequently, the net economic costs of a 28.0-million-acre and a 36.4-million-acre program, compared with no continuation are \$0.9 billion and \$1.5 billion per year, respectively. The net economic cost is the sum of the impacts of the positive change to society in farm income, the negative impact to society of the increased expense for taxpayers from the CRP outlays, and the negative impact of the increased expenditures for a smaller quantity of commodities.

Comparison of the rough approximations of environmental benefits derived from the estimates for currently enrolled acreage, with the economic cost estimates derived from the analysis of projected enrollment under the 1996 Act provisions, results in total estimated annual benefits to society that exceed costs by \$1.1 billion and \$1.2 billion, respectively, for the 28.0-million-acre and 36.4-million-acre scenarios. The uncertainty of the magnitude of errors of the environmental benefits estimates, and to a lesser extent those of the economic costs estimates, makes evaluation of this preliminary comparison difficult. Making the comparison even more difficult is the incompleteness of the environmental estimates (e.g., values of

increased wetland conservation, endangered species habitat, trees and open spaces, and reduced nutrients and pesticides in the environment). If the environmental estimates were more complete, it is likely that the estimated net impacts to society of maintaining enrollment of both 28.0 million and 36.4 million acres would be higher, and the difference in benefits between the 28.0-million-acre option and the 36.4-million-acre option would be greater.

Risk Assessment

A risk assessment and related benefit-cost analysis are required to accompany proposed major rules, as defined under section 304 of Public Law (P.L.) 103-354. Because agricultural producers needed to know long-term objectives of the CRP as soon as possible in order to formulate production plans for 1997 and because completion of the regulatory analysis required by section 304 of Public Law 103-354 to accompany a proposed regulation was not practicable in the time available, the Director, Office of Risk Assessment and Cost-Benefit Analysis (ORACBA), concluded that it was appropriate to extend the time allowed for completion of the required analyses. A general time line for conducting the required analyses developed by the Director, ORACBA, and the FSA involves a two-phase approach.

Phase 1. Available upon request are (a) an environmental assessment, and (b) an environmental risk assessment, (c) an outline of a benefit/cost analysis of mitigation measures, (d) a comparison of the relative risks managed by CRP and by other programs in the Department which address similar risks resulting from comparable activities, and (e) a plan for monitoring the risk reduction expected to occur as a result of the CRP in accordance with Public Law 104-127. Evaluation and monitoring would allow completion of a meaningful cost-benefit analysis of the current and potential enrollment practices compared to measured environmental benefits.

Phase 2. One year after the final rule is promulgated, the benefit-cost analysis of mitigation measures will be completed. This benefit-cost analysis will address the costs associated with implementation and compliance with the regulation and the qualitative and quantitative benefits of the regulation.

Initially, the principal focus of the CRP was to address the excessive erosion problems of highly erodible cropland. However, the development and widespread adoption of improved tillage systems have significantly increased producers' ability to control

erosion on much of U.S. cropland at levels that do not cause substantial environmental degradation. Consequently, the focus of the program has been broadened to include those situations where long-term conversion of cropland to non-cropping uses is required to solve significant agriculture-related environmental problems.

The purposes of the risk assessment are to (1) identify and characterize the major production activities occurring on U.S. cropland that create stresses on the elements of the natural environment that CRP must protect under its legislative mandate, (2) identify the stresses that are created by these activities, (3) describe the adverse relationships between the stresses and the affected elements of the environment, and (4) estimate the amount of the adverse impacts.

Specific resource concerns or values to be protected that are defined in the 1985 Act include (1) soil erosion (including cropland productivity), (2) ground water and surface water quality, (3) habitat for wildlife (including threatened and endangered species), (4) wetland functions and values, and (5) compliance with Federal and State environmental laws including air quality.

The major agricultural cropping practices connected to the environmental risks include (1) disturbance of soil and land, (2) application of irrigation water, (3) application of pesticides, and (4) application of nutrients. Enrollment of cropland in CRP largely eliminates these activities as well as the stresses and adverse impacts.

The objective of the CRP risk assessment is to provide information that can assist program managers in developing guidelines, requirements, and policies that will lead to enrollment of acreage that addresses the most severe resource situations in the most cost-effective manner.

From the information reviewed, it is clear (and well recognized) that crop production activities can sometimes have adverse impacts on one or more elements of the natural resource base. The significance and severity of these impacts can vary significantly among geographic areas.

For example, soil and land disturbance can create excessive erosion that lead to reductions in the quality and productivity of soils, creates sediment that pollutes water bodies and destroys wetland, and becomes airborne and creates human health and safety problems. Land disturbance, especially land conversion to intensive row cropping uses (or conversions of

wetlands) can also degrade important wildlife habitats.

Productivity losses resulting from soil erosion will likely average about 1 percent over the next 100 years for all U.S. cropland if erosion continues at the levels occurring in 1992. However, potential productivity losses are much greater for different commodities in different areas, e.g., more than 3 percent for corn and soybeans in the Lake States, and 2.3 percent for cotton in the Southern Plains.

Projected levels of sediment loadings from cropland total about 350 million tons per year, nearly 30 percent of total annual sheet and rill erosion. About two-fifths of the sedimentation occurs in the Corn Belt, but the Northern Plains and Appalachian regions also have significant sedimentation problems. Wind erosion resulting from cropping practices are projected to be about 940 million tons per year in the United States. Most occurs in the Great Plains, Mountain, and northern portions of the Pacific region. Airborne dust particulate matter problems are most significant in the Columbia Plateau area of southeast Washington State and the southern high plains region of Texas and New Mexico.

Conversion of grasslands and wetlands to cropping uses has contributed to a significant decline in habitat for many grassland and wetland bird and animal species, particularly in portions of the Corn Belt and Northern and Southern Plains regions. CRP can be useful in reducing threats to species population declines and in maintaining stable populations of wildlife.

Other significant problems include the contamination of surface and ground water supplies by nutrients (primarily nitrogen and phosphorous) and pesticides. Nutrient (fertilizer) use and runoff appear to be highest in the Corn Belt and Northern Plains regions, areas along the Mississippi River, and the eastern Coastal Plain.

Pesticide use is highest in the Corn Belt and the Northern Plains, while pesticide runoff potential is greatest in the Corn Belt, the southern portion of the Lake States, and along the Mississippi River in the Delta region. Areas with potential problems of pesticides leaching into ground water area are primarily located in the Southeast region, portions of the Corn Belt, and along the Mississippi River in the Delta region.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a

notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental assessment that this rule does not have a significant adverse impact on the environmental, historical, social or economic resources of the Nation. Therefore, it has been determined that these actions will not require an Environmental Impact Statement.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, CCC 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, or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires CCC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Domestic Assistance Program

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are the Conservation Program-10.069.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be major under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). It has been determined that, pursuant to section 808 of SBREFA, it is impracticable,

unnecessary, and contrary to the public interest to delay the effective date of this rule. Making this final rule effective immediately will permit CCC to conduct a general sign-up period for the program in advance of this spring's planting season. Delay of the sign-up period beyond that time would unduly limit the supply of land available for enrollment in the CRP by not allowing for enrollment and planning in sufficient time for new contracts to be in effect on October 1 and thereby inhibit the ability of the program to achieve the important public benefits which were the purpose of the recent amendments to the CRP and the other provisions of the 1996 Act dealing with conservation. Accordingly, this rule is effective upon publication in the Federal Register.

Paperwork Reduction Act

Information collections contained in this rule have been previously cleared by OMB under 0560-0125.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. Before any action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

Background

The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term resource-conserving cover. CRP participants enroll contracts for periods from 10- to 15-years in exchange for annual rental payments and cost-share assistance for installing certain conservation practices. Applicants submit offers in such a manner as the Secretary prescribes.

The CRP is authorized by the 1985 Act. The Code of Federal Regulations (CFR) has contained two parts for the CRP: 7 CFR part 704 has contained provisions regarding the CRP acreage enrolled from 1986 through 1990 and 7 CFR part 1410 has contained provisions regarding the CRP acreage enrolled since 1991 under the amendments to the 1985 Act made by the Food,

Agriculture, Conservation, and Trade Act of 1990.

An interim rule was published on August 27, 1996 (61 FR 43943), implementing provisions of the 1996 Act amendments.

The 1996 Act amended the 1985 Act to provide for extension of enrollment authority for up to 36.4 million acres at any one time through 2002 and a desire to improve the program, prompted development of a proposed rule which was published on September 23, 1996 (61 FR 49697), that sought comment on long-term CRP policies. The comment period ended November 7, 1996.

Proposed Rule Summary

Among other proposals, with respect to land eligibility, CCC proposed to change, in § 1410.6, the existing CRP land eligibility criteria to include, as eligible lands, wetlands and their appropriate associated acreage, as determined by CCC, certain acreage enrolled in the Water Bank Program (WBP) administered by the Natural Resource Conservation Service (NRCS), and certain cropland associated to noncropped wetlands, as determined appropriate by CCC. Wetlands are intrinsically valuable natural resources that provide important benefits to people and the environment. Wetlands improve water quality, reduce flood and storm damage, help control soil erosion, and provide important fish and wildlife habitat. Certain wetlands provide particularly important filtering functions because of their location between land and water. It was proposed for WBP land that certain WBP acreage, to the extent it otherwise meets statutory CRP criteria, would be eligible to be enrolled in the CRP during the final year of the WBP agreement.

Also, the 1985 Act authorized the watershed areas of the Chesapeake Bay Region, the Great Lakes Region, the Long Island Sound Region, and other areas of special environmental sensitivity to be designated as conservation priority areas for a period of 5 years, subject to redesignation. A number of these areas are approaching the expiration of their initial designation. The 1996 Act further amended the provisions regarding conservation priority areas under Environmental Conservation Acreage Reserve Program. The proposed rule set out proposed amendments to § 1410.8 to reflect the new provisions.

Further, CCC proposed to generally restrict the total cropland in a State that could be designated as a conservation priority area to no more than 10 percent. The rule proposed certain procedures for priority designations.

With respect to wetland enrollment, CCC proposed allowing additional incentives for such enrollments.

CCC also proposed to offer enhanced financial incentives, to obtain enrollments of filter strips, riparian buffers, field windbreaks, grass waterways, and acreage located in wellhead protection areas designated by the applicable State Agency or the Environmental Protection Agency (EPA).

The 1985 Act generally provided that no commercial use can be made of the enrolled CRP acreage but permits haying or grazing during droughts or similar emergencies. CCC also sought comment generally on haying and grazing of CRP land.

CCC noted that as a result of provisions in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1997 (the 1997 Appropriations Act), contract extensions would not be available in Fiscal Year (FY) 1997 and proposed that acreage already enrolled in the CRP could be offered for re-enrollment based on the same criteria applicable to other offers.

With respect to the unilateral early contract termination provisions for certain acreage authorized by the 1996 Act amendments, CCC proposed to expand the list of acreage not eligible for early termination to include: (1) All wetlands, not just those enrolled under signup 8 and 9 criteria; (2) land subject to frequent flooding, as determined by CCC; (3) EPA-designated wellhead protection areas; and (4) any wetland buffers that may be required according to the conservation plan to protect the functions and values of wetland acreage.

The proposed rule also proposed that the CRP would be carried out by CCC through the Farm Service Agency (FSA) using State and county FSA offices and that CCC intended to rank, competitively, all offers based on the environmental benefits index taking into account the Government cost of the contract except for those contracts the acceptance of which are known to provide especially high environmental benefits.

CCC proposed to use a system that considers, for indexing purposes, soil erosion, water quality, wildlife habitat, and cost while also considering other technical factors such as, but not limited to, recommendations of State technical committee, conservation priority areas, permanent wildlife habitat, tree plantings, wetlands functions and values, and conservation compliance requirements.

Additionally, there were four issues for which CCC sought comment but which were not the subject of proposed amendment to existing regulations: (1) Whether and in what manner CRP acreage could be devoted to the production of biomass crops and whether such use would be consistent with the policy and provisions of the 1985 Act; (2) periodic nonemergency haying or grazing of CRP acreage; (3) the relationship of priority designations for the CRP, Wetlands Reserve Program (WRP), and Environmental Quality Incentives Program (EQIP); and (4) the methodology of making priority designations. Further, the proposed rule, by consolidating parts 704 and 1410, set out the entirety of the program regulations for review and comment in preparing the program for future enrollments.

Summary of Comments

CCC received 3,467 comments concerning the proposed rule. Entities responding included individuals, State governments, local governments, State farm organizations, national conservation organizations, national farm and commodity organizations, and Members of Congress. Comments came from all States except Delaware, Maine, Nevada, and West Virginia, and comments came from the District of Columbia and Canada.

In addition to the comments received in Washington, D.C., USDA conducted public listening forums in each State where comments on the CRP proposed rule were made for inclusion in the administrative record. These comments were included in the development of this final rule.

Changes in this final rule from the proposed rule of September 23, 1996, are based upon CCC's experience in implementing CRP since 1986 and on consideration of the comments received. Numerous minor editorial and other changes have been made in the text and order of the regulations for clarity and to facilitate the application of the regulations.

General Comments

Many comments were not directed to the proposed rule itself, but to related matters such as the enrollment level of the program, program development, and geographical distribution of the enrolled acreage. There were other comments which were not germane to CRP, were vague, or were not submitted timely; those comments were not considered.

There were 487 comments supporting the implementation of the CRP and citing the individual or collective conservation, environmental, or other

benefits of the program obtained as a result of CRP. These benefits included reduced soil erosion, improved air quality, enhanced wildlife habitat, surface and ground water conservation, commodity price and supply stabilization, and enhanced personal and community economies.

One comment suggested that any program changes should be made gradually rather than immediately as indicated in the proposed rule. If the proposed rule had proposed dramatic changes or shifts in policy, such a suggestion would have merit. However, since 1987, when the use of an Erodibility Index (EI) was initiated, CRP has evolved to a more environmentally-sensitive program. The proposed rule has merely continued these prior incremental changes and the changes set forth in the proposed rule are not as dramatic in nature as prior amendments.

Three comments suggested that no funding shifts occur between CRP and other farm programs. As a result of the 1996 Act, CRP is now funded through CCC's borrowing authority and implementation of the CRP will not affect CCC's ability to carry out other programs.

One comment suggested that more field personnel are needed to inspect and monitor producers who are receiving Government subsidies. FSA has a thorough compliance program which includes the annual review of contract compliance on a statistically significant sample.

Three comments suggested that the deadline for comments be extended and eight comments recommended timely approval of the final rule or no delays in signup. The comment deadline will not be extended due to the need to finalize this rule in a timely manner as set out above. Four comments suggested that the current program be extended for another year to fully assess the environmental and economic costs of the proposed rule. However, as indicated in the Program Changes section of the proposed rule, Congressional provisions contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contract expiring in FY 1997. CCC is very concerned that to delay action further could disrupt the farming and ranching community where planning is already underway for the upcoming cropping season. CCC intends to conduct a signup as soon as possible to alleviate any planning difficulties.

Four comments opposed the CRP because they suggested it was paid for by taxes, hurts new farmers, benefits foreign countries, or because of its

economic impact. Twenty comments suggested that the need to subsidize the agricultural community has passed and that the land with expiring CRP contracts should be returned to production. Several comments opposed unspecified program changes. Congress has, in the 1996 Act, reauthorized the CRP, and the CRP continues to provide environmental benefits as was outlined in the proposed rule.

One comment opposed the CRP being used as the all-purpose conservation program. CRP is operated in compliance with the 1985 Act. Another comment suggested that stricter regulations be implemented for people who have contracts for real estate investment purposes. The CRP regulations are designed to in fact assure the maximum benefit to the public for money spent in the program. The proposed regulations accomplish that function.

One comment suggested that deed restrictions may be placed subsequent to enrollment to maintain desirable environmental benefits. Post-contract deed restrictions are not prohibited by the 1985 Act.

Another comment suggested that the cost of returning CRP acreage to production would be a hardship. However, there are no CRP requirements as to the use of acreage after a CRP contract has matured.

One comment suggested that the proposed rule was too complex without offering any suggestions to simplify the final rule. CCC has endeavored to limit this rulemaking to ensure that it does not overreach its legislated authority in implementing the program while informing the public of CRP goals and policies. The final rule has been reviewed extensively for simplification wherever possible.

One comment suggested that CCC follow National Environmental Policy Act (NEPA) requirements regarding the impacts of the proposed rule. The proposed rule indicated that an environmental assessment had been completed with a finding that the proposed rule did not have a significant adverse impact on the environmental, historical, or social resources of the Nation, as required by NEPA.

Another comment suggested that the proposed rule imposes an unfunded mandate on conservation districts. While conservation districts perform a vital function in the development and implementation of CRP, the regulations for the CRP impose no mandates on anyone. The decision of a conservation districts to assist in CRP enrollments is purely voluntary.

Program Development

Seven comments opposed a perceived shift in emphasis from soil erosion to improvement of water quality. One comment supported a perceived change in CRP's emphasis from protecting individual's farms to protecting the "public water." Three comments supported the expanded eligibility requirements and asked that erosion control remains a priority objective of the CRP. The water quality provisions under CRP are not new. Eligibility was expanded beginning in 1988 to include filter strips. In 1989, eligibility criteria was expanded to include cropped wetlands and areas subject to scour erosion.

Another comment suggested that CRP could be used to tie programs together and that there should be cooperation between local, State, and Federal Governments to provide innovative opportunities in ways that maximize private participation and flexible utilization for perennial crops, biomass production, or other creative initiatives. CCC continues to be responsive to initiatives that can be demonstrated to cost-effectively develop new uses and technologies consistent with the 1985 Act.

Two comments suggested pilot programs to implement provisions of the proposed rule. However, the 1985 Act provides no authority to conduct pilot programs.

Enrollment Level

Fifty-nine comments supported a program level of 36.4 million acres. Four comments opposed the projected decline of the CRP to 28.1 million acres by 2002, which was an estimate contained in the cost-benefit assessment section of the proposed rule. Another comment suggested any references to downsizing CRP be removed from the rule. However, neither the proposed nor final rules contain any reference to an authorized level. CCC intends to enroll up to 36.4 million acres by accepting the acreage that maximizes environmental benefits but must be able to adjust to changing circumstances.

One comment indicated that idling 36.4 million acres is not prudent but offered no concrete suggestions. Another comment suggested that the program be terminated over a three year period by terminating contracts now or agreeing to accept reduced rental payments with greater haying and grazing privileges. However, this is not consistent with the 1996 Act amendments. CCC will carefully consider the amount of acreage to enroll

by maximizing environmental benefits and cost.

Two comments suggested that sufficient acreage remain available for enrollment for conservation priority areas or practices. CCC intends to continue its continuous sign-up of certain highly beneficial environmental practices.

Geographic Distribution

Five comments suggested that the enrollment distribution among States and regions of the country should not change. One comment was in favor of a geographical balance. However, CCC intends to enroll the most environmentally sensitive acreage to obtain the greatest nationwide benefit.

Other Issues

Fifty-seven comments generally favored the production of biomass crops on CRP. Fifty comments were generally opposed and of those, 29 comments were opposed because of potential harm to wildlife. CCC has adopted the policy outlined in the Conference Report accompanying the 1996 Act, which indicated that biomass production be considered an acceptable cover crop practice "provided that no harvesting is allowed until after the contract is completed or terminated." In addition, the 1985 Act generally prohibits the commercial use of CRP acreage.

With respect to the periodic nonemergency haying or grazing of CRP acreage, three hundred and twenty-five comments were received. While the majority of respondents favored periodic nonemergency haying and grazing, there was a lack of consensus regarding how the process should be implemented. A number of comments were in support of some form of haying and grazing and a smaller number opposed the provision.

One comment suggested a forage reserve program with haying in blocks and not strips to preserve habitat. Another comment suggested a grass bank so that one producer could rest native grass by grazing CRP owned by another person. Three comments recommended that CRP contract holders be limited as to any profit earned from hay produced on CRP acreage.

In view of the divergence of opinions expressed by respondents on how the provision should be implemented, CCC will seek legislative amendments to modify the existing provisions relating to haying and grazing of CRP acreage and obtain specific authority for periodic managed haying and grazing. However, existing provisions of the 1985 Act generally prohibit the non-

emergency haying or grazing of CRP acreage.

With respect to issues concerning implementation of the conservation priority area authority applicable to CRP, EQIP, and WRP and the manner in which to consider redesignation of soon-to-expire conservation priority area designations, respectively, these issues are addressed in the discussion of § 1410.8.

§ 1410.1 Administration.

Four comments supported the inclusion of specific reference to the U.S. Forest Service and State forestry agencies for consultation on tree planting practices. However, three of the comments suggest making consultation with the Forest Service or State forestry agencies a requirement rather than an option. This recommendation will not be adopted because there are areas in the country where these services are not available.

Eighteen comments suggested that § 1410.1 be amended to provide that: "CCC may consult with the U.S. Fish and Wildlife Service (FWS) or the State wildlife agency for assistance as is determined by CCC to be necessary for developing and implementing conservation plans and practices in a manner to optimize benefits to wildlife habitat." Several comments specifically stated that wildlife agencies should also be consulted on tree planting practices in addition to consultation with forestry agencies. Two comments suggest that FSA should take every opportunity to work with wildlife professionals to ensure that the USDA-mandated wildlife benefits of this new CRP are incorporated into contracts whenever possible. The FWS and State wildlife agencies are represented on State Technical Committees and the FWS is a member of a national multi-agency team established to provide recommendations to the Secretary on CRP policy. The Department also consulted with various wildlife agencies when formulating CRP policies. CCC and FWS will work together on as needed basis. Therefore, this suggestion was adopted.

There were several comments supporting the State and county FSA committees as the proper authorities to implement CRP including bid ranking, rulemaking, eligibility criteria, ranking plans and contract approval. CCC has delegated substantial authority to State committees which, acting upon recommendations from the State Technical Committees (see 7 CFR part 610) chaired by NRCS, assist in CRP operations within a State. Field level representatives of FSA and NRCS also participated in the development of

issues prior to the preparation of the final rule.

One comment suggested that the rule should be amended to clearly identify the role of the State Technical Committees. The role of the State Technical Committees is defined in 7 CFR part 610.

One comment suggested that the local NRCS field office, along with local conservation districts, should have the ability to accept applications and approve contracts. Conservation districts are not federal agencies and, therefore, cannot obligate federal funds. During continuous signup, both NRCS and FSA have the ability to take requests for enrolling acreage in CRP. In order to maintain the fiscal integrity and consistency of the program, however, only one agency, FSA, will be responsible for approving contracts on behalf of CCC.

Five comments suggested that State ranking plans be reviewed by NRCS and FSA national offices to ensure all objectives of the program are met. The national offices of NRCS and FSA, acting on behalf of CCC, will review all proposed State ranking plans.

One comment suggested that rules for developing and applying an approved State ranking plan should be clear and available to those who will be affected by them and also suggests that offers in States with ranking plans should not be subject to ranking according to the national ranking plan. Another comment stated that national ranking was not desirable and that contracts should be approved at the local level. All State ranking plans will be public information and provided to interested applicants when requested. The national ranking process will only be used to determine the number of acres allocated to a State when State ranking plans are used. All offers will then be ranked according to the State plan. CRP contracts will be all approved in local FSA offices.

There were a number of comments suggesting that drainage districts be afforded special authority to approve or deny a producer's request or otherwise limit a request for enrollment to protect the mission of the drainage district. There is no authority for a district to control program benefits. However, they are free to make their concerns about particular practices known.

One comment suggested that contract approval be delegated to the local office level and implied that national ranking for acceptability is not desirable. CRP contracts are approved locally. The national office does not approve contracts. State FSA Committees, based on recommendations from State

Technical Committees, determine whether a State or national ranking process is implemented. In States that use a national ranking plan, the national office uses an objective ranking process. In States that use a State ranking plan, the ranking process is used to determine the number of acres accepted in that State. In all cases, the CCC is attempting to achieve the maximum benefit for the nation as a whole.

§ 1410.2 Definitions.

Some commenters suggested that "permanent wildlife habitat" and "wildlife corridor" were used interchangeably in the rule. The permanent wildlife habitat was amended to make clear that it includes wildlife corridors.

One comment suggested the definition of permanent wildlife habitat is not adequate because it does not take into consideration fish habitat. As "wildlife" can include both terrestrial and aquatic species, this recommendation has not been adopted.

Three comments opposed the definition of "predominately highly erodible field" with no suggested change provided. Twelve comments suggested that because the definition of highly erodible land is land that has an erosion rate greater than "T," it appears to penalize landowners who are doing a good job by preventing them from enrolling, while rewarding those who are doing a poor job of soil conservation. Another comment opposed the defining of highly erodible land as "erosion rate greater than T." Two comments suggested that the NRCS definition for "predominantly highly erodible" be set to use a predominance percentage of 33⅓ if this definition is going to be used to determine CRP program eligibility. Another comment suggests changing the definition for "predominantly highly erodible field" by replacing "66⅔ percent of the land" with "75 percent of the land." One comment suggested that in the definition of "predominantly highly erodible field" the special allowance for the participants who agree to plant trees be expanded to include, also, those who will plant native grasses or create shallow water area for wildlife. Three comments suggested changing the fourth sentence defining HEL to read "having an erodibility index equal to or greater than 8 for both wind and water erosion and an erosion rate greater than T." One comment suggested adding "or a combination of both" in the definition of highly erodible land after the word "erosion." One comment suggested replacing the word "and" with "or" in subparagraph (4)(i) in the definition of highly erodible land. One comment

suggested the definition of soil loss tolerance was inconsistent with the definition in the current highly erodible land regulations. The land eligibility provisions have been revised to be consistent with those published in 7 CFR part 12. Those standards are known and there is no need for an inconsistency for CRP eligibility determinations. Therefore, those lands basically eligible for CRP will include acreage which is subject to the conservation compliance provisions of 7 CFR part 12. Differences in erosion can be accounted for by ranking.

Two comments suggested that the definition of conservation district be amended to use the more generic reference "State or territorial conservation district law, or tribal law." Another comment suggests the definition of conservation district include the term natural resources district. The definition in the proposed rule already included these terms and is consistent with the definition of conservation district in other USDA programs.

One comment suggested adding a definition for "conservation priority area." This recommendation was adopted.

Six comments suggested that for purposes of this rule a shelterbelt renovation be included in the definition of "field windbreak, shelterbelt and living snow fence." However, there is no need to modify the definition. Any windbreak, shelterbelt, or living snow fence that is no longer functioning properly for the intended purpose is eligible to be enhanced or restored.

Four comments suggested the creation and definition of "State wildlife priority areas" that could also be determined eligible as conservation priority areas and that these areas should be designated in consultation with State NRCS technical committee and state wildlife agency. The definition of conservation priority areas is sufficiently flexible to include this recommendation.

One comment suggested changing the definition of agricultural commodity in the CRP rule to the definition used in other 1996 Act programs. The term "agricultural commodity" is defined for CRP purposes by the 1985 Act.

Two comments suggested the definition of agricultural commodity be clarified to take into consideration tillage under crop residue management practices. The 1985 Act's definition is sufficiently flexible to consider tillage operations under crop residue management practices.

One comment suggested that the definition of "agricultural commodity"

should treat crops produced by so-called "no-till" practices in the same manner as crops produced normally. This recommendation will not be adopted as it is unnecessary. So called "no-till" crops, as the term is normally used, do involve sufficient tilling for these purposes.

One comment suggested USDA add tall prairie grass windbreaks in the definition of "windbreaks." This recommendation will not be adopted because there is no assurance that the longevity of the practice can be assured.

Several comments were received regarding definitions of "cropped wetlands." One comment suggested adding a new definition of "cropped wetland" to mean "any wetland farmed under natural conditions, any wetland designated a farmed wetland, or any restorable areas designated as prior converted cropland according to part 12 of this title." Another comment suggested defining "cropped wetland" to mean "any wetland, farmed wetland or restored prior-converted wetland within a field that has been annually planted or considered planted to an agricultural commodity in two of the 5 most recent crop years." A third comment recommended adding language to the "cropped wetland" definition to include wetlands farmed under natural conditions, without manipulation. To provide for consistently with 7 CFR part 12, new definitions have been to the CRP rules for "cropped wetlands," "farmed wetlands" and "wetlands farmed under natural conditions." Those definitions draw on part 12.

One comment suggested adding a new definition for "vegetative cover" to mean native grasses or favorable introduced warm-season grasses, preferably multiple species and including some species of annual vegetation in planting mixtures. It is not appropriate to restrict vegetative cover as suggested. However, additional consideration may be awarded in the bidding process for more desirable covers.

One comment suggested that "reducing water erosion" needs to be added to the purposes included in the definition for "field windbreak, shelterbelt, and living snowfence." The proposal is inconsistent with the windbreak standards and specifications and could cause rill and/or ephemeral gully erosion if a grassed waterway filter strip, or some other practice is not established along side of the windbreak.

Four comments suggested defining the term "environmental benefits index" to include the factors which

comprise the ranking process. The recommendation was adopted.

One comment suggested the definition of a conservation plan should clearly indicate that the definition only applies to the CRP or, alternatively, that the requirement for vegetative cover should be modified. The definition has been modified to read "Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures."

One comment suggested the exception for land in terraces that are no longer capable of being cropped be removed from the definition of "cropland." The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term, resource-conserving cover. Acreage that is no longer capable of being cropped has already been removed from crop production. Therefore, this suggestion is not being adopted.

One comment suggested the definition of a "field" is inconsistent with the 1985 Act. No basis was provided, or found, for the suggestion. Therefore, the recommendation was not adopted.

One comment suggested the term "vegetation" be defined and include woody vegetation in the definition. Vegetation is included in the final rule definition of "permanent vegetative cover" as "perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a lifespan of 10 or more years, or trees."

Eight comments suggested changing the 3.0 acre minimum requirement in determining a manageable unit. On review, the manageable unit provision was determined to be unnecessary and removed.

§ 1410.3 General description.

One comment suggested CRP regulations should target environmentally sensitive acreage while returning quality land back to production. This rule has been published consistent with CCC's goals to retarget CRP to more environmentally sensitive acreage. This includes a minimum erodibility index level to help ensure that CRP does not remove from

production land that is not environmentally sensitive. It is a goal of CCC to only retire land from agricultural production where the benefits to the Nation are greater from enrollment than in keeping land in continued agricultural production.

§ 1410.4 Maximum county acreage.

Some commenters suggested that there should be no exceptions to the 25 percent of a county's cropland enrollment prohibition and suggested setting an administrative limit of generally between 10 percent to 15 percent as a maximum. Section 1243(b)(1) of the 1985 Act provides that "The Secretary shall not enroll more than 25 percent of the cropland in any county in the programs administered under the conservation reserve and wetlands reserve programs. . . ." Accordingly, the reduction of the limitation would be inconsistent with the 1985 Act and would unduly limit CCC's options. As to any exceptions, CCC has heretofore not approved a recommendation for an exception unless NRCS, conservation districts, the Extension Service, and the Forest Service (FS) have made a favorable recommendation and only after local producers, agricultural-related businesses, and others were polled.

Regarding county and State acreage limitations, some suggested that a limitation should be implemented on land that can be placed in CRP by counties and States. Each State should have a minimum and maximum number of acres allotted to be maintained and the regulatory limits on total designated acreage should be flexible where there are direct and serious considerations for protecting sources for drinking water. Arbitrarily establishing limits for enrollment by State inhibits CCC from maximizing environmental benefits achieved per federal dollar expended.

§ 1410.5 Eligible person.

One comment suggested the term "calendar" be removed because the requirement is for one year not one calendar year. Another comment suggested the one year requirement be removed. Two comments suggested that the land ownership time requirement be eliminated if the goal of the program is erosion control and water quality. One comment concerned producers who assume CRP contracts who may not have owned the land to meet the necessary 1-year ownership requirement prior to the next CRP signup. After careful review, the term "calendar year" has been removed and replaced with the term "12 months." The ownership eligibility requirement is a 1985 Act

requirement and cannot be administratively eliminated. The proposed and final rule do not preclude those producers who succeeded to existing contracts within 12 months of the next CRP signup period from reoffering such acreage.

One comment supported reducing the land ownership requirement from three years to one year. This change is consistent with the 1996 Act amendments to the 1985 Act.

One comment suggested adding "and grazing land" following all references to cropland in § 1410.5. The term "cropland" has been replaced with the term "eligible land" now that certain marginal pasture land has been made eligible for CRP.

One comment suggested that if a landowner receives government money for their CRP land, the landowner should fit some sort of definition of a farmer. The 1985 Act does not restrict participation in the program to "farmers." Eligible producers include owners and operators of eligible land; therefore, this suggestion will not be adopted.

§ 1410.6 Land Eligibility.

Cropping History Requirement

Nine comments suggested changes to the cropping eligibility requirement such as allowing flexibility to consider crop rotations or only requiring that acreage be planted or considered planted in two of the last ten crop years. Ten comments suggested that the cropping eligibility requirement be waived under emergency situations or for certain practices, such as filter strips and riparian buffers, or for certain land, such as land that has the potential to create erosion concerns, land subject to long term flooding, and land already devoted to waterways. The CRP is a voluntary program with the purpose of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long-term resource-conserving cover. The current cropping history requirement is necessary to obtain and maintain the purpose of the CRP consistent with the 1985 Act which, except for very limited situations dealing with marginal pasture lands, limits CRP eligibility to "cropland." Therefore, these suggestions will not be adopted.

One comment supported the current cropland eligibility base period.

One comment suggested that land coming out of CRP should not automatically be eligible to re-enroll. Two comments suggest that land known to be going out of agricultural production should not be allowed to be offered for CRP. These suggestions have not produced a rule change as the relative value of offers is taken into account in the ranking process and there is no automatic eligibility for old CRP lands.

Two comments suggested that information be released to clarify whether land under CRP contract during the cropping eligibility base period would be considered as meeting the cropping eligibility requirements. Current CRP land may be offered for re-enrollment if it meets the new eligibility criteria. The Deputy Administrator of FSA may develop further refinements on this issue as needed to deal with delays in re-enrollment.

Erodibility Index

Several hundred comments were received regarding the provisions relating to the EI of 8. There was little agreement among respondents regarding the appropriate minimum eligibility standard.

Fourteen comments supported maintaining the EI enrollment eligibility level of 8 to make more acres of productive land available for farmers. One comment supported using a weighted average EI for eligibility.

Seventy-six comments generally opposed the erodibility criteria and suggest that land with an EI of less than 8 be eligible to be enrolled in the CRP. Some comments suggested eligibility levels ranging from 5 to 7 as an alternative. Four comments suggested that the EI of greater than 8 level be used as a guideline while allowing flexibility to enroll land with an EI of less than 8 when environmental or economic benefits justify such a decision. Eight comments suggest using the same EI level to determine both HEL compliance and CRP eligibility.

Sixty-four comments supported the concept of targeting only environmentally sensitive land and placing more productive land in production. Of the 64 comments, 39 comments suggested that an EI eligibility level of 15 or greater be established.

Thirty comments suggested giving more consideration to increasing land terrain as a qualifying factor. The concern is that previously eligible land does not qualify and is highly erodible from snow melt, rain, and wind.

The erodibility index will be retained in the final rule including the present minimum value of 8. At this level, a majority of the lands that have a serious erosion problem without adequate erosion protection will be basically eligible for enrollment in the program. Further, it is a natural break point consistent with HEL determinations under the conservation compliance provisions in 7 CFR part 12. Specifically, acreage that is considered HEL under the regulations at part 12 will be basically eligible to be offered for CRP. Acreage within a field that has been redefined will have to meet the weighted average EI of 8 criteria. In order to implement the program in a reasonable manner, some cut-off value which is consistent with the program's purpose must be used. The breakpoint value of 8 or greater has been determined to be the level which is most consistent with these purposes.

Water Bank Program

Four comments suggested that eligibility criteria be expanded to include lands no longer enrolled in the WBP or that were never enrolled in the WBP if the land is type 3 through 7 wetlands which are not naturally occurring. That is, if eligibility criteria are met, allow the land to be enrolled regardless of WBP status or relationship. Neither the proposed nor final rule precludes the enrollment of eligible acreage not previously enrolled in the WBP.

One comment suggested including an associated wetland buffer with any WBP contract acreage converted to the CRP. Neither the proposed nor the final rule preclude the enrollment of eligible acreage as wetland buffers. In addition, a substantial portion of acreage enrolled in the WBP included associated buffer acres.

Four comments suggested adding type 4 wetlands to the WBP acreage eligible to be converted to the CRP. Neither the proposed nor the final rule preclude WBP acreage which is type 4 wetlands that are normally artificially flooded from eligibility for the CRP. Such wetlands that are not normally artificially flooded should not be enrolled in the CRP because such enrollments would tend to defeat the purpose of the program because such lands are naturally permanently under water, which is not consistent with the eligibility criteria and purposes of the CRP.

Three comments suggested that artificially flooded WBP wetlands and wetlands with a history of cropping before WBP should be eligible for conversion to the CRP. Two comments

suggested that eligibility for conversion from the WBP to the CRP apply to "managed wetlands where water is intentionally applied to increase and/or enhance wetland functions and values and are classified as types 3 through 7 wetlands." Neither the proposed nor the final rule preclude types 3 through 7 wetlands that are normally artificially flooded from eligibility.

Three comments supported the eligibility of WBP acres for CRP. One comment suggests not limiting WBP acreage eligibility to just the final WBP year. The Department has determined that to enroll acreage that is currently enrolled in a land retirement program is not a cost-effective use of the CRP and defeats the purpose of the program. Accordingly, the suggestion is not adopted.

Cropped Wetlands

One comment suggested that allowing farmed wetlands into the CRP will lessen the incentive for farmers to enroll wetlands into long-term or permanent easements in the WRP. The CRP final rule allows the enrollment of cropped wetlands and appropriate associated upland acreage to restore and protect wetland functions and values without unduly competing with existing programs like WRP. The 1997 Appropriations Act limited fiscal year 1997 WRP enrollment to 130,000 acres. Permitting the enrollment of cropped wetlands in CRP allows CCC to obtain significant wildlife habitat, water quality, erosion control, and flood control benefits. The proposed rule inadvertently listed "farmed wetlands" as eligible for enrollment. Beyond "farmed wetlands," cropped wetlands also includes "wetlands farmed under natural conditions."

Forty-four comments suggested that uplands associated with cropped wetlands be included as eligible land. Several comments provided suggested language for eligible land under the cropped wetlands provision: "Acreage designated a farmed wetland or a wetland farmed under natural conditions by NRCS according to part 12 of this title, together with the appropriate amount of associated upland, as determined by the State Technical Committee to be necessary to protect the wetland and meet wildlife habitat needs." Most of these comments suggest a ratio of six upland acres per wetland acre or six upland acres per wetland basin; however, one of these comments suggested the upland acres should be kept to a minimum to balance the needs of the landowner. The final rule has been amended to provide that cropped wetlands and appropriate

associated cropland will be basically eligible for CRP. In addition, appropriate associated cropland with noncropped wetlands will also be basically eligible to be enrolled providing the acreage meets other cropland eligibility requirements. The NRCS will determine the associated acreage that is necessary to maintain the viability of the wetland area not to exceed a 6 acre of cropland to 1 acre of wetland ratio.

Sixty comments suggested including wetlands as eligible land for the CRP. The purpose of the CRP is to cost-effectively assist eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The Department has determined that to enroll such acreage is not a cost effective use of the CRP and is not consistent with the purpose of the program. Accordingly, the suggestion is not adopted.

One comment opposed provisions making all cropped wetlands eligible for CRP. Cropped wetlands are a vital natural resource which provide significant environmental benefits. Therefore, this suggestion was not adopted.

Two comments suggested that the "type 1-20" wetland classification system be replaced with the Department of Interior's *Classification of Wetlands and Deepwater Habitats of the United States*. For example, "type 3 through 7" land would be reclassified as "semipermanently flooded, permanently flooded, scrub, shrub, and wooded wetlands." The WBP authorizing legislation, however, bases WBP eligibility on the old classification system and that system should, therefore, for consistency and ease of administration, continue to be the standard used in this rule for types 3 through 7 wetlands. One comment suggested that FSA be assigned responsibility for delineating wetlands. Neither the proposed nor the final rule delineates wetlands or changes any wetland classifications. The final rule allows cropped wetlands, as determined by the NRCS, to be basically eligible for enrollment in the CRP. Accordingly, these suggestions are not adopted.

One comment suggested that opportunities for wetland conservation and restoration should remain available through both the WRP and the CRP. Neither the proposed nor the final rule restrict the opportunity for producers to enroll in the WRP.

One comment supported eligibility of wetlands but suggested that the need for regulatory reform not be replaced by what should only be an option similar to mitigation. It does not appear that permitting cropped wetlands to be enrolled in the CRP impacts any options available to producers regarding mitigation.

Air Quality

Four comments suggested that air quality be considered adequately for eligibility and evaluation. Two comments suggested that the purpose of the CRP be expanded to include air quality for lands contributing to an EPA designated PM₁₀ non-attainment area and went on to suggest that lands contributing to the air quality problem in such an area should be automatically eligible for the CRP. A factor has been added to the ranking process to evaluate air quality improvements from reducing airborne dust and particulate from cropland wind erosion. In addition, State FSA Committees have the authority to request conservation priority areas to target wind erosion concerns.

Wind Erosion

One hundred thirty four comments suggested that failing to adequately consider wind erosion as an eligibility or evaluation factor would unfairly exclude too many erodible acres from CRP eligibility. Several of the 134 comments suggested combining wind and water erosion when calculating the EI of a field. The EI measures soil erosion caused by both wind as well as water. The EI of a field is established based on the higher of the two indexes. Wind erosion receives equal weighting with water erosion in determining eligibility for enrollment in CRP. Furthermore NRCS has indicated that the EI values for wind erosion and water erosion should not be combined. While wind and water erosion may occur on the same field, both erosion types do not necessarily occur on the same acre nor do both types of erosion occur at the same time of the year. Thus, whatever is the most prevalent type of erosion, either wind or water, will be used to establish the EI value. Accordingly, these suggestions are not adopted.

Scour Erosion

One comment suggested that scour erosion eligibility criteria be flexible to allow scoured areas not adjacent to the water body to be eligible. One comment suggested that lands eligible under the scour erosion provisions of § 1410.6(c) should be planted to an appropriate tree species or mixed species of trees.

Neither the proposed nor the final rule require land to be adjacent to a waterbody to meet the requirements of the scour erosion eligibility criteria. The proposed and final rule requires that cropland approved for enrollment under the scour erosion criteria to be planted to an appropriate tree species unless NRCS or FS certify that the site is not suitable for trees.

Wildlife

One comment suggested wildlife benefits not be an eligibility consideration for enrollment in the program. Five comments suggested that wildlife habitat should not be a sole criteria for CRP eligibility. Seventy comments suggested that a wildlife exemption or wildlife criteria be developed for determining eligibility. One comment suggested that a natural heritage eligibility criterion be developed for wildlife habitat.

Wildlife habitat will be positively benefitted from the inclusion of cropped wetlands, certain WBP acreage, special practices offered in the continuous signup provisions such as riparian buffers, and potentially through State and national conservation priority areas. Therefore, these suggestions will not be adopted.

One comment suggested that any permanent vegetative cover be acceptable wildlife cover as determined by the State wildlife agency in consultation with the State Technical Committee. It is the applicant's decision as to which practice and acreage to offer for enrollment. Certain practices requested by applicants are not intended for wildlife or do not provide wildlife benefits. Therefore, this recommendation is not being adopted.

Filter Strips and Riparian Buffers

Several comments were received regarding the size of filter strips and riparian buffers and the eligibility of such practices on certain land. Four comments suggested that a minimum width for filter strips be established. Four comments suggested 33 feet instead of 66 feet as was printed in a previous Agency directive. Nine comments suggested that the State FSA Committee or other local officials should be responsible for determining the size of filter strips and riparian buffers. One comment suggested filter strips and riparian buffers need to be clearly defined so farmers will have a quick snapshot of what these terms mean.

The size requirement of filter strips and riparian buffers is not incorporated as part of the CRP proposed or final rule. Previous versions of 7 CFR part

1410 included minimum and maximum size requirements for filter strips. The Conference Report accompanying the 1996 Act provided that the Managers intend for the Secretary, to the extent practicable, to consider local conditions when determining minimum required widths for vegetative strips in CRP. Complaints were received from the public that the regulation was not flexible enough to meet the needs of intended CRP sites in all States. Therefore, determinations on size requirements will continue to be made at the local level utilizing the NRCS office Field Office Technical Guide (FOTG).

Two comments suggested making riparian buffers on marginal pasture land eligible for CRP. Two comments suggested allowing filter strips and riparian buffers along dry streams, swales, sod waterways, and riparian buffer areas around feedlots. Ten comments suggested allowing filter strips along intermittent streams and drainage ditches, and making field end rows and headlands eligible for filter strips during continuous signup. Riparian buffers on eligible marginal pasture land may be offered for enrollment in the CRP but only for planting to trees, as is provided for in the 1985 Act. Filter strips and riparian buffers along dry streams, swales, feedlots and waterways do not obtain the benefits, goals, and objectives of such practices and is not consistent with the 1985 Act. Neither the proposed nor the final rule preclude filter strips adjacent to seasonal streams and drainage ditches.

Wellhead Protection Areas

Several comments suggested expanding or changing which agency's designation of wellhead protection areas will be used to determine CRP eligibility. After careful review, the final rule has been amended to provide that "wellhead protection areas" will mean those approved by appropriate State agencies or the EPA.

One comment suggested that wellhead protection provisions support local communities, but do nothing for rural areas. Wellhead protection areas may be designated in areas served by rural water lines and enrollment of surrounding land in the CRP can provide substantial water quality benefits.

One comment supported the inclusion of wellhead protection areas as environmentally sensitive lands eligible for the CRP.

Trees

One comment suggested that established pine stands on CRP land be renewed and remain in the CRP program to prevent conversion of the land back to crop production. Four comments suggested that CRP contracts planted to loblolly or slash pine should not be re-enrolled because of projected high retention rates, economic returns, and limited wildlife benefits. Any acreage currently in the CRP, is considered to be capable of being planted. Any untimely tree destruction could be accounted for in the ranking process. That process may also take other relevant factors into account.

Enrolling Existing Contracts

Sixty-six comments opposed the land eligibility requirements because land currently enrolled in the CRP may not be eligible to be re-enrolled. Several comments suggested allowing at least 50 percent of all land currently enrolled in the CRP to be re-enrolled regardless of the eligibility requirements. Several other comments suggested allowing at least 50 percent of all land enrolled in the CRP to be re-enrolled if wildlife benefits will be enhanced. As indicated in the proposed rule, the 1997 Appropriations Act effectively precludes the extension of any CRP contract in FY 1997. The eligibility criteria is designed to assure maximum achievement of the program's goals.

One comment supported the requirement for re-enrolled bids to compete with new bids.

Other Issues

One comment suggested no restrictive eligibility criteria be used to determine enrollment in the CRP. While this recommendation allows all acreage to compete based on the ranking process, it unnecessarily increases workload to a point that it may become unmanageable. Accordingly, this suggestion will not be adopted.

Six comments suggested that whole farm enrollment not be allowed. The 1985 Act does not direct that we deny enrollment of otherwise eligible acreage based on the size of the field and adding such a requirement would unduly limit CCC's options. Therefore, this suggestion will not be adopted.

Two comments suggested that land subject to flooding during one year out of ten years be eligible for the CRP even if there is no evidence of scour erosion. There are other Federal programs available to address these concerns. The CRP is not a flood risk reduction program. The final rule does not preclude such land from enrollment if it meets one of the land eligibility criteria.

Two comments suggested that a new eligibility criterion for "Lands adjacent to existing CRP land, wildlife management areas, national wildlife refuges and other natural areas."

Eligibility for such land is not necessary and may not be a cost-effective use of the CRP; however, CCC recognizes the benefits of such contiguity and such land will be appropriately considered under the ranking process. Therefore, these suggestions will not be adopted.

One comment suggested changing § 1410.6(h)(4) to include "emergency priority areas" as eligible areas along with designated conservation priority areas. The commenter was not clear as to what was intended as "emergency priority areas;" therefore, this comment will not be adopted.

One comment suggested clarifying the text of § 1410.6 by creating three lists that clearly define (1) all provisions which must be met if land is to be eligible, (2) exceptions under which those lands not meeting those provisions will still be eligible, and (3) conditions under which no lands will be eligible. Another comment suggests that the practices listed under § 1410.6(b) and § 1410.6(h)(5) be the same and include all those practices listed in § 1410.6(b). The final rule amends § 1410.6 to clarify these provisions.

Two comments suggested that wildlife habitat, riparian buffer, and contour grass strips be added to the list of special practices for which eligibility for otherwise eligible land is prescribed in § 1410.6(h)(5). Both the proposed and final rule provide eligibility for otherwise eligible land determined suitable for such practices. However, § 1410.6 has been amended for clarity.

Two comments suggested that references to acreage protected by easements or mortgage restrictions be removed or clarified. One comment suggested permanent conservation easements for either the entire farm or those portions being retired from cropping. These recommendations will not be adopted because there does not appear to be a substantial program benefit from enrolling limited lands, there is no authority in the 1985 Act to require conservation easements on new CRP contracts, and such easements could discourage enrollment and raise costs. On review, in addition, the provision appears to be sufficiently clear.

One comment suggested that language in § 1410.6(d)(1) be changed regarding the provision for the ineligibility of land where the water quality objectives can be obtained in another program if the CRP eligibility determination to be was

unduly delayed. This has been accomplished by inserting the words "in a reasonable and timely fashion" after the word "obtained" in the regulation.

One comment suggested not allowing early termination if the intent is to re-offer the same land at a higher rental rate. The 1985 Act does not restrict early termination to only those persons who intend not to re-offer the acreage. The 1985 Act provides that such acreage may be re-offered during a subsequent signup period. Therefore, this suggestion will not be adopted. It should be further noted that the early termination provisions only apply to contracts initially enrolled prior to January 1, 1995. Accordingly, all contracts enrolled after that time regardless of whether the acreage was under an earlier contract will not contain the unilateral early termination authority.

One comment suggested that highly erodible land that can be farmed should be left in crop production, especially where technology has been improved to control erosion. The CRP is a voluntary program with the objective of cost-effectively assisting eligible owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible land and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to an approved long term resource conserving cover. The CRP can be used to assist owners and operators to meet conservation compliance requirements and improve farming practices. To exclude highly erodible land that can be farmed from the program would limit CCC's ability to assist such land owners and operators and remove a valuable tool used to conserve the nations' resources. However, CCC will endeavor to not enroll land which is better put to agricultural production. Accordingly, this suggestion is not adopted.

Two comments suggested that flooded pasture land and acres currently under water which has been cropped in the past should be eligible to enroll into CRP. Enrolling acreage not capable of being cropped is not cost-effective and tends to defeat the purpose of the program.

§1410.7 Duration of contracts.

Several comments suggested the Department should consider a shorter contract period for contracts that have already been extended or should allow contracts to be extended rather than be re-offered for enrollment or allowed to exit CRP in an orderly fashion. The 1985 Act provides that contracts can be no

less than 10 nor more than 15 years. Further, the 1997 Appropriations Act effectively precluded the extension of existing contracts in FY 1997.

Several comments suggested establishing varying years of duration of contracts between 10 and 15 years for various reasons, such as to lessen the effects of returning vast acres to crop production; for wellhead protection areas; tree planting; in return for contracting with Federal, State or local government to lengthen the term of the contract or for a permanent easement; or when landowners voluntarily commit to maintain the conservation measures for several years following contract expiration. In accordance with the requirements of the 1985 Act, the final rule provides that contracts devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors may be for the length specified by the producer, so long as the contract is not less than 10, and not more than 15, years in length. Otherwise, however, the contracts will be 10 years to preserve CCC's flexibility and reduce CCC's financial exposure.

§ 1410.8 Conservation priority areas.

One hundred ten comments were received recommending a specific area be identified as a conservation priority area. One comment supported the cropped wetland exemption but stated that for the Prairie Pothole region a wildlife exemption should be established to reaffirm the longstanding, successful relationship CRP has developed between sportsmen and farms. Another comment suggested the local conservation district be the lead agency responsible for nominating conservation priority areas in a State. The following have been designated as national conservation priority areas: Chesapeake Bay, Long Island Sound, Great Lakes region, and the Prairie Pothole region. Recommendations for State-designated conservation priority areas may be submitted by State FSA Committees based on recommendations from State Technical Committees to the Deputy Administrator for Farm Programs, FSA (Deputy Administrator). Land located within a designated CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment.

Seventy-five comments were received regarding the proposed 10 percent cropland limitation per State. Several comments suggested that the limitation was too low or should be otherwise adjusted such as allowing designation of an additional 10 percent for a wildlife conservation priority area or allowing

State FSA Committees to exceed the 10-percent limit to meet Federal clear air standards. Other comments supported the limitation, or suggested it was too high or was arbitrary. After reviewing the public comments, CCC has determined to maintain the 10-percent limitation. Providing a limitation ensures the strength of the priority area concept by allowing designation of only the highest priority needs within a State. States will designate the purpose of the priority area as enhancing either water quality, wildlife habitat, or other environmental concerns. The 10-percent limitation could be exceeded for extraordinary circumstances, if approved by the Deputy Administrator. All recommendations for State-designated conservation priority areas will be reviewed by a national interagency team to ensure that the purpose is clearly defined and to ensure consistency among States and with the intent of the program.

Several comments suggested that a conservation priority area may need to be designated exclusively for wildlife or wildlife habitat plantings or should be used to protect lands from wind and water erosion, while others suggested that a priority area should not be established based on wildlife habitat alone. Several emphasized major watersheds for conservation priority areas especially where drinking water is impacted, and a few comments suggested that Soil and Water Conservation Districts or the State Technical Committee be given the authority to designate conservation priority areas. A few comments suggested priority areas be based on improving water quality and wildlife habitat that cannot be achieved through other programs or suggested that State wildlife agencies be allowed to designate conservation priority areas for wildlife. Several comments suggested that designation of conservation priority areas be allowed for the mitigation of natural resource emergencies or to give priority to those contracts already established. State FSA committees, based on their review of the recommendations of the State Technical Committee, will have the opportunity to recommend designation of conservation priority areas based on actual adverse impacts of agricultural activities on water quality, wildlife habitat, or other environmental concerns. Recommendations will be required to define the conservation and environmental objectives and analyze how CRP can cost-effectively address such objectives. The scarcity of a habitat or wildlife species is a key factor in

establishing a wildlife habitat-based conservation priority area so the CRP can be effective as a means to avoid wildlife species population declines and preserve rare or disappearing habitat. The CRP is not an emergency program; other USDA programs exist to address emergencies affecting natural resources. Giving priority to contracts already established would decrease the Department's ability to achieve its goal of cost-effectively enrolling the most environmentally sensitive acreage.

Some comments suggested conservation priority areas should provide preference to but not automatic eligibility of lands offered within an area, or that location within a conservation priority area should become a part of an environmental benefits index for ranking rather than eligibility. Other comments suggested allowing a certain type of land to be considered as a conservation priority area rather than a specific geographic area. One suggested land type was center pivot corners. Another comment suggested geographically balancing the conservation priority areas, targeting areas with diverse conservation needs. Other respondents suggested that USDA should guard against conservation priority areas enrolling land which would not normally qualify under other criteria, or opposed establishment of conservation priority areas due to unspecified adverse impacts. One comment suggested the review of accomplishments within designated conservation priority areas at the time of redesignation.

Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. Location within a conservation priority area will be considered in the ranking process. State FSA committees have the authority, based on recommendations from State Technical Committees, to recommend a conservation priority area based upon a specific, identifiable land quality provided the priority area still serves the purpose of water quality, air quality, or wildlife habitat concerns and the State can provide a map indicating the location of the priority area. State FSA committees in all 50 States are eligible to submit recommendations for conservation priority areas. All existing CRP conservation priority areas have expired or have been withdrawn. State FSA committees must submit new recommendations for any conservation priority area to be effective. Each recommendation must include an evaluation and monitoring plan before the priority area can be approved.

Several comments addressed the issue of utilizing the same conservation priority areas for the CRP, WRP, and EQIP. Some stated that the conservation priority areas should be cross-referenced or coordinated so that benefits from multiple programs could apply; for example, CRP could be used in a WRP priority area to stop erosion from filling in a protected or restored wetland. One comment suggested including EQIP State-designated conservation priority areas for CRP. Another suggested that conservation priority areas should be implemented by receiving a percentage of the funding, with the remainder of the funds going to general disbursement. Others suggested it would be unwise to closely link the conservation priority areas for the different programs and that all three programs should have conservation priority areas. A respondent suggested, for example, that EQIP conservation priority areas will likely result in very little incentive for tree planting, but that the CRP has valuable tree planting incentives. Some comments suggested that it would not be possible to put CRP conservation priority areas in tandem with the other programs because EQIP and WRP are locally based and it is hard to set priorities at the national level, and that conservation priority areas set, for example, for the WRP should be used only for WRP, with the goal of permanent restoration of diverse wetland functions and values. One comment suggested that the implementation of conservation priority area authority should be limited to noninvasive technical assistance from USDA, and several comments suggested that the State or State FSA committee should establish conservation priority areas, not the Federal government.

State FSA committees, based on the recommendation of State Technical Committees, recommend conservation priority areas based on State specific environmental needs and objectives. The Deputy Administrator reviews State recommendations and makes approvals that are consistent with the goals and objectives of the CRP. Land located within a CRP conservation priority area is eligible to be offered for enrollment, although the acreage still must compete with all other offers for actual enrollment. CRP funding is not determined based upon location inside or outside of a priority area but upon actual enrollment. Further, the CRP is available for all eligible acreage, including that located within WRP or EQIP conservation priority areas. State FSA committees, based on recommendations from State Technical

Committees, may submit EQIP conservation priority areas as CRP conservation priority areas. The recommendation, however, must meet the requirements established for CRP, such as the 10-percent cropland limitation.

The Department agrees that the purposes of the CRP, WRP, and EQIP differ, but believes that the determination of conservation priority areas may be coordinated in the future.

§ 1410.9 Alley-cropping.

One comment suggested that alley-cropping not be limited to contracts requiring the planting of hardwood trees. That limit is consistent with the 1985 Act.

§ 1410.10 Conversion to trees.

Several comments suggested that the special provisions for converting CRP land to hardwood trees and for allowing three years, with certain limits and in certain cases, to plant the trees be extended to softwood trees. The limitation with respect to hardwood trees in both cases is statutory. Also it was suggested that site-specific selection of tree species for tree planting purposes be made by professional foresters. Such consultation can be obtained if needed.

Two comments suggested that the requirement to reduce the cost-share payment by the amount of the original cost-share payment be eliminated and a bonus equal to 25 percent of the cost of establishing these new covers be provided. The comments cannot be adopted. The 1985 Act provides that the Secretary will not incur any additional expense for the acres converted, including the expense involved in the original establishment of the vegetative cover, that would result in cost share for costs in excess of the costs that would have been subject to cost share for the new practice had that practice been the original practice.

Three respondents commented on the requirement that for conversions made under this section, the CRP participant must agree to also agree to participate in the Forest Stewardship Program. One supports the requirement while another suggests elimination and a third suggests that participants only be encouraged to participate when converting to trees. The required participation in the Forest Stewardship Program is statutory.

A few comments suggested that riparian corridors containing hardwood trees be added to the list of special to which the conversion provisions apply, and that the Deputy Administrator offer 15-year contracts on all CRP lands to be

planted to hardwoods. Areas devoted to hardwood trees or which can be considered as wildlife corridors are already eligible under the proposed rule. Also, the rule provided that contracts for hardwood tree plantings could be for 10- to 15-years at the producer's discretion. Requiring that the producer always take a 15-year contract does not appear to be necessary or cost-effective.

One comment suggested that trees be harvested on acres that were converted to such plantings. The 1985 Act prohibits the harvesting of the trees during the contract period and prohibits any commercial use of trees on land that is subject to a CRP contract unless it is expressly permitted in the contract. Participants are, however, allowed to conduct pruning, thinning, stand improvement, or other activities consistent with customary forestry practices on land that is planted to trees. The landowner may harvest the trees only after the contract expires.

§ 1410.11 Restoration of wetlands.

Comments generally supported the restoration of eligible wetlands in the CRP but discouraged competition with the WRP. Comments varied on the administrative mechanism used to accomplish restoration. Two comments suggested that wetlands enrolled in CRP be required to be restored with no mention of incentives or additional compensation. Several comments related to incentives offered to landowners. One comment suggested a 25-percent bonus be added to the annual payment rate and two others support unspecified additions. Other incentives to be implemented should accomplish this objective at much lower cost to the program.

Two comments suggested that wetlands enrolled in CRP, regardless of initial enrollment date, either be restored with a 25-percent cost-share incentive or be transferred to WRP. The date restriction in the regulation is required by the 1985 Act. One comment suggested that the highest quality wetlands, regardless of size, be directed to the WRP for long-term protection. However, program requirements differ between CRP and WRP, making transfer an issue for landowner consideration. Inclusion of bonus points in the criteria are supported in two comments as a method of encouraging restoration.

One comment recommended limiting CRP enrollment to only wetlands so that land coming out would be available for production. The 1985 Act as it relates to CRP is directed at highly erodible lands, as well as other sensitive lands, and a limitation to wetland enrollment would,

accordingly, not be appropriate. Another comment suggested that land coming out of CRP contract should reflect the land use prior to enrollment, including wetlands. Once a contract expires, the participant is under no further obligation to abide by any terms or conditions of the CRP contract except as may be required to meet conservation compliance or wetland conservation provisions of 7 CFR part 12 to obtain benefits for certain other USDA programs. Such a change, in addition, would be cost-effective even if undertaken for a limited time.

One comment suggested that drained lands be eligible for CRP without requiring that ditches be plugged or tile broken. Although CCC will provide financial incentives to restore wetlands and additional consideration is provided in the ranking process for acceptance into the program, wetland restoration will only occur by voluntary agreement. Accordingly, this suggestion has not been adopted.

§ 1410.20 Obligations of participant.

Four comments suggested the reduction of allotments and quotas for tobacco and peanuts interferes with the economic soundness of the family farm and is too harsh on tobacco and peanut quota holders because they no longer have the ability to reduce their crop acreage bases. The respondents suggested that tobacco and peanut allotments and quotas be exempt from reduction. This recommendation is not adopted because the reduction is required by the 1985 Act. Crop acreage bases, for other crops which had deficiency programs, ceased being used after enactment of the 1996 Act.

The majority of comments on this section dealt with weed control. Two comments suggested that weed control should be mandatory. One of the two comments suggested that those not complying should be penalized only on those acres affected, not the entire contract acres and not to exceed one year's payment. The other comment suggests that NRCS and FSA accept and seek information and assistance from landowners or the general public without creating a contract compliance issue. CRP participants are required to maintain the acreage according to the conservation plan of operation developed by NRCS. Participants who do not comply with the plan are assessed payment reductions or the applicable contract acreage is terminated. Noxious weeds must be controlled in accordance with local laws on all contracts at all times. It is not necessary to file a complaint to have

CRP acreage checked for compliance with the plan.

Eleven comments suggested weed control should be targeted only to those weeds officially listed as "noxious weeds" by the applicable State. Three comments suggest that the requirement for general control of weeds be eliminated. CRP practices are installed to meet a particular environmental or conservation objective. Plants that impede that particular objective must be controlled. CCC believes that it is important to control weeds that are detrimental to the purpose of the selected cover. Therefore, this recommendation will not be adopted. However, CCC will work with CRP participants to preserve the environmental benefits including, where appropriate, spot mowing and other spot treatments.

§ 1410.21 Obligations of the Commodity Credit Corporation.

One comment suggested that the meaning of "subject to the availability of funds" is unclear, given that rental payments will be made under the authority of the CCC. CCC is now authorized to use its borrowing authority to fund the CRP. However, it is necessary to maintain this language since CCC funds will not be earmarked in advance.

Nineteen comments were received in support of the incidental gleaning of certain CRP acreage and one comment was in opposition. Incidental grazing associated with gleaning of crop residues is authorized by the 1985 Act and can provide a worthwhile additional incentive for participants without a significant effect on other parties; such gleaning is limited both by the regulations and the conservation plan.

One comment suggested that should funds cease to be available, land enrolled in CRP would be freed from the contract obligations without causing default on the part of the landowner, and that the landowner would be provided at least 12 months' notice of USDA's termination. Another comment suggested that CRP contracts must be considered legally binding on both the landowner and the CCC and rental payments should be made to landowners in a timely manner as provided in the contract. Since inception, all CRP rental payments have been made, subject to statutory constraints. That should continue to be the case.

Two respondents suggested that any bases being protected should not be released because it would only reduce farm program payments. This

recommendation will not be adopted. Once the CRP contract expires there is no authority to protect allotments or quotas in accordance with the 1985 Act. The eligibility of current holders of CRP contracts to participate in the production flexibility contracts authorized by the 1996 Act is statutory. However, CRP acreage that is reenrolled will be considered to be under a new contract and will lose any "base" protection for production flexibility contracts that otherwise applied since such bases were terminated by the 1996 Act. If a farm with tobacco quotas or allotments or peanut quotas is enrolled in the CRP, such allotments and quotas must be reduced but will be restored in accordance with the statutory provisions in effect when the CRP contract is terminated.

Two comments suggest the quota for peanuts or tobacco on land being enrolled in CRP should not be reduced. This recommendation will not be adopted because the reduction is required by 1985 Act.

§ 1410.22 Conservation plan.

One comment suggested wildlife habitat creation be included as a requirement in the conservation plan. Another comment suggested that FSA and NRCS, in conjunction with wildlife managers, work to ensure that partial field practices also provide habitat benefits for wildlife. This recommendation will not be adopted. It would be inappropriate to require wildlife provisions if the purpose of the practice is not wildlife.

One comment suggested that the local weed control representatives be requested to participate in developing a plan for evaluating noxious weed control on contracts requesting extension and for assuring adequate noxious weed control on active contracts. Participants are required to control noxious and other weeds to protect the cover and the conservation plan will include any control techniques. CCC relies on local weed officials to enforce State laws regarding the existence of any noxious weeds on CRP acreage.

Three comments opposed the requirement that landowners control all weeds, insects, and pests because some weeds being controlled in most cases offer the highest wildlife values and places unnecessary constraints on program participants. This requirement applies only when the approved cover has been damaged by the existence of weeds, insects, or pests.

One comment suggested that contracts allow for spot mowing and spot treatment of weeds. Procedure will

encourage this provision where technically appropriate. However, disturbance of the cover will not be permitted during the primary nesting period.

Five comments supported NRCS supervision to create firebreaks with light tillage on CRP land and would like the issue addressed in the regulations. This recommendation will not be adopted. However, firebreaks are allowed on CRP acreage when required by State and local units of government to include barren firebreaks where erosion is not a hazard and documented in the conservation plan.

One comment suggested that in order to create and enhance wildlife habitat, pine plantations and fescue monocultures should be eligible for reenrollment only if they are improved substantially for wildlife through habitat diversification. This recommendation will not be adopted as the indexing system will allow for taking those factors into account, along with others, to maximize achievement of the program's objectives. However, improving cover for the benefit of wildlife will enhance the likelihood of acceptance in the program.

Regarding native plant species, five comments suggested that native plant species be required for cover plantings. Two comments suggested the use of seeds on CRP land represent the type of vegetative communities native to that area. Three comments suggested that a stronger emphasis be placed on diversifying cover plantings on CRP contracts to include native species where applicable. One comment suggested that the regulations should provide, generally, that land cover should use vegetation native to the region and include as diverse a mixture as is environmentally valuable and cost effective. Two comments suggested that eligible practices should state a clear preference for establishing native species of grasses, legumes, shrubs, and trees and to the extent practicable, landowners should be encouraged to plant locally derived plant materials. Two comments suggested that the regulations require the use of native warm season grasses on lands enrolled CRP where grassland is the desired cover type.

The CRP has multiple purposes and it is a voluntary program. A producer selects the practices most desirable for his or her farming operation. If the producer's objective requires an introduced species, it would be inappropriate and inefficient for CCC to require that a native species be used.

One respondent suggested that § 1410.22(b) should be amended to

replace "or" with "and" when listing the purposes of the practices to be included in the conservation plan. Conservation plans are drafted according to the primary purpose of the practice. To modify such a plan to include all objectives may unnecessarily compromise the environmental benefits to be obtained.

One comment suggested the choice of the species to be planted should be an option of the landowner and professional forester as determined by both to be best suitable for the site and the owner objectives. Flexibility on this issue reflects current CCC policy. However, species will be considered when evaluating offers.

One comment suggested the local NRCS offices have the flexibility to develop grass roots maintenance plans that would achieve the overall CRP objectives, which would include determining stocking rates and time of implementation based on local conditions, climate and topography. The conservation plan is written to include appropriate maintenance provisions. Therefore, this recommendation will not be adopted.

Eight comments suggested that the conservation plan should allow landowners to irrigate crops from water cover located on the CRP acres with an appropriate reduction in the rental rate. Generally, acreage accepted with water as an approved cover was done so for water quality and wildlife purposes. To drain such acreage for crop production could adversely impact the land directly counter to the purposes for which the acreage was accepted. Further, such activities could be destructive to the cover and do not appear to be needed or cost-effective.

One comment suggested that the conservation plan should allow appropriate maintenance of permanent cover and should not have required management of anything other than CRP contract acreage unless the producer requests a more comprehensive plan. The CRP conservation plan does make allowance for the appropriate maintenance for only the cover.

One comment opposed eliminating the minimum widths for the strip practices and suggests, in all cases, the area of the strips should be computer based on the average width, not the minimum. Other comments suggested a minimum width. The Conference Report accompanying the 1996 Act suggested that, to the extent practicable, that local conditions should be considered when determining minimum required widths for vegetative strips in CRP. Further, complaints were received from the public that previous regulations were

not flexible to meet the needs of intended CRP sites in all States. Accordingly, it has been determined that decisions on these size requirements will be made at the local level.

One comment suggested that the conservation plan should take into account any abnormal weather patterns and should the cover fail through no fault of the contract holder, NRCS should work with the producer in order to assure that the cover is replaced in the most cost-efficient manner. It is unclear how a technician can develop a plan for abnormal weather patterns. However, NRCS will work closely with a participant in such circumstances. Similarly, USDA will work with landowners so that all options for land use and Federal and State assistance are known.

One comment suggested that NRCS cooperate with producers who put land back into production and organizations or agencies cooperating in the funding of the program must diligently respect private property rights. The Conference Report accompanying the 1996 Act suggested that lands exiting the CRP under the early termination provisions of the 1985 Act not be held to a higher conservation compliance standard than similar cropland in the area. NRCS will work with a landowner in providing technical assistance on potential conservation compliance problems and to provide an appropriate conservation plan.

Several comments suggested that silviculture thinning from 8 to 10 years of age and subsequently every 3 to 5 years thereafter until final harvest be allowed with a reduced payment during the years of commercial activity. The final rule has been amended in § 1410.21 to provide for normal forestry maintenance activities consistent with the 1985 Act.

One comment suggested that filter strips and riparian buffers should be allowed to be contracted anywhere determined necessary, not just along permanent streams and that minimum widths for all the strip practices not be eliminated with ephemeral waterways allowed to flow through the middle of the strip. This recommendation did not reflect the 1985 Act limitations on eligible land such as the enrollment of cropland and marginal pasture lands. Accordingly, this comment can not be adopted.

One comment suggested prioritizing between filter strips and riparian buffers when there is an adjacent water course involved. The filter strip and riparian buffer standards provides the needed flexibility for NRCS to make these

eligibility determinations. Accordingly, this comment has not been adopted.

One comment suggested that fields should not be considered a qualified established stand unless a majority of the specified and drilled grasses are present and flourishing. This is already a requirement for practice certification.

One comment suggested that the conservation plan should allow for the addition of structures, grassed waterways, terraces, and settlement ponds on land enrolled in CRP which will be returning to production. CRP's purposes do not include preparing land for a return to production. Therefore, this recommendation has not been adopted.

Two comments suggest the terms, conditions, and requirements of CRP maintenance contracts be made known to farmers prior to commitment. The required maintenance provisions are included in the conservation plan and are reviewed and discussed with CRP participants by NRCS prior to contract approval.

§ 1410.23 Eligible practices.

One comment supported sound conservation practices such as filter strips, waterways, headlands, and riparian buffers but did not support an annual payment from CCC to maintain them. CCC provides a nominal additional rental rate incentive, up to \$5 per acre as part of the maximum rental rate calculation, to ensure that participants are willing to enroll land for those practices and then properly maintain them. Actual cost-share rates are set in accordance with the 1985 Act. CCC will continue to set rental rates in a way that reflects true costs and which achieve the intended environmental goals of the program. These additional incentives, because of the special nature of the contracts, are needed and warranted. Offering a lesser amount, however, enhance the ranking of the offer.

One comment suggested riparian criteria include flooded and scour areas rather than be set in terms of the number of feet from the water course. The current rule and this final rule already provide for establishing such criteria in either manner.

Three comments suggested that eligible practices include naturally occurring grasses and other covers. The rule allows for such action by CCC so no change was made from the proposed rule.

Two comments suggested that tree planting should be a priority in areas subject to scour erosion and also in riparian areas. Tree planting is a requirement in scour erosion areas.

§ 1410.6 provides that cropland approved for enrollment under scour erosion criteria must be planted to an appropriate tree species or mix thereof according to the FOTG, unless NRCS, in consultation with FS, determines that tree planting is not appropriate. Trees or shrubs are required for the riparian buffer practice.

One comment suggested that riparian corridors containing hardwood trees should be added to the eligible practices. The final rule has been amended to remove references to specific eligible practices.

One comment suggested that FSA, NRCS, and wildlife managers should strive to ensure whole field practices are considered. This is not precluded under the final rule.

One comment suggested the State FSA committee include the implementation of practices which will benefit successful native field habitats. The final rule allows such a priority if deemed appropriate in particular cases.

Three comments suggested that the regulations allow the use of native vegetation/natural succession on lands enrolled in CRP and cost-share periodic maintenance, for example, by light disking. Cost-share payments are made as authorized in the 1985 Act and incentives may be included in rental payments to reflect special burdens. Such incentives will be added as needed. Acreage with covers already established are permitted to be enrolled provided all other eligibility criteria are met.

One comment suggested that for lands planted to trees there be a maximum of 436 trees per acre, a minimum of 30 foot unplanted buffer of natural vegetation or wildlife plantings along the edge of fields, a minimum of 10 percent of the former agricultural field maintained in wildlife openings (includes acreage in unplanted buffer), and cost-share on seeding of up to 25 percent of the field with perennial or reseeding legumes (when site conditions are appropriate). This recommendation will not be adopted. These are specific practice requirements that are more appropriate for the FOTG.

Five comments supported a new practice for wildlife habitat. Two comments suggested forest trees be an acceptable permanent vegetative cover. There is no need to create a new practice. CRP already has two practices for wildlife habitat. Both hardwood and softwood trees are acceptable covers.

Two comments stated that the proposed rule does not adequately address prairie wildlife protection. The final rule continues the provisions for establishing grassland cover that has

benefitted prairie wildlife species and resulted in habitat that has assisted in the population recovery of water fowl and other migratory bird species in the Great Plains States.

Two comments suggested the wildlife water cover restrictions placed in the 1985 Act should not apply to this section. This recommendation can not be adopted due to the provisions of the 1985 Act.

One comment suggested that annually planted wind strips be an eligible practice. The purpose of CRP is to cost-effectively assist owners and operators in conserving and improving soil, water, and wildlife resources by converting highly erodible and other environmentally sensitive acreage normally devoted to the production of agricultural commodities to a long-term resource conserving cover. Therefore, this recommendation will not be adopted.

§ 1410.30 Signup.

The comments received suggested including agricultural drainage wells, field border strips, center pivot circle corners, grassed terraces, linear grass strips, shrub plantings arranged in irregular blocks, and land currently enrolled in WBP. The practices eligible for continuous signup may be implemented on field borders and center pivot corners if such land is determined eligible and suitable for the intended practice. As to the other suggestions, their adoption would not be cost-effective uses of the CRP. The land and practices eligible for continuous signup generally provide benefits to large areas when compared to the acreage on which the practice is implemented.

One comment suggested all lands USDA intends to be eligible for the continuous enrollment process should be listed in the regulations. Specific practice eligibility determinations will not be included in the regulations so as to provide the needed flexibility to be able to modify the available practices to respond to agricultural, environmental, and economical changes. Therefore, this suggestion is not being adopted.

Twenty-seven comments supported the new continuous signup implemented in 1996.

Several comments were received regarding the CRP enrollment period. Two comments suggest the State FSA committee establish the enrollment period and one comment suggests a constant annual enrollment period be established through 2002. The CRP acreage limitation is a national limitation allowing CCC the discretionary authority to determine the

maximum acreage level up to 36.4 million acres. The desired maximum acreage limit determines when enrollment periods are announced considering the number of acres currently enrolled and the schedule for acres exiting the program. The maximum acreage level at any time can be dependent upon market conditions, farm financial conditions, and national and local environmental concerns that must be evaluated nationally, with other factors. A rigid schedule would unduly limit CCC's options and would not allow adjustments to changed circumstances.

One comment suggested participants be allowed to choose any year to be the effective year of the contract. To allow producers to pick any effective year for the contract prevents from CCC maintaining current acreage levels. However, producers, who enroll acreage under the continuous signup provisions, choose when to enroll acreage and are permitted to defer the effective date of the contract for up to six months.

Several comments suggested the strip practices, "contour grass strips" and "wildlife corridors" be made eligible for immediate enrollment under the continuous signup provisions. Like the permanent wildlife habitat practice, wildlife corridors are eligible for the continuous sign-up when located in wellhead protection areas. Contour grass strips are eligible. The rule, however, will continue to allow complete flexibility for CCC on determining which practices are chosen for continuous signup.

One comment suggested there should be no discrimination against smaller acre bids when they provide big benefits. CCC recognizes the value of certain practices which generally enroll small acres in providing significant benefits by allowing otherwise eligible offers for these practices to be enrolled without further evaluation.

§ 1410.31 Acceptability of offers.

General

Four comments suggested that the ranking structure was one of few Federal programs that "helps our citizens and wildlife." Two comments suggested that expiring contracts not be allowed any advantage in subsequent enrollment. Each offer will be evaluated on its own merits. Existing CRP offers that will use current covers will have reduced costs and would have, in that sense, some advantage.

Another comment suggested that the bidding process should be replaced with a set amount of \$25.00 to \$35.00 per acre. The report accompanying the 1997

Appropriations Act reaffirmed previous Congressional direction that CRP rates should not exceed the prevailing rental rates for comparable land in the local area. Establishing arbitrary values would be inconsistent with this directive.

Four comments requested an opportunity to review and comment on the ranking process. The ranking process, as set forth in the proposed rule, was developed by an interagency task force consisting of several USDA Agencies, the Environmental Protection Agency, and the U.S. Fish and Wildlife Service. The ranking process, moreover, is not a rigid schedule but may be adjusted depending on the progress of the enrollments, or changed priorities. Interested parties have been, and may continue, to make their views on priorities known.

Another comment suggested that more of the matters now set forth in technical manuals should be incorporated into the proposed rule. This is not a CRP rule issue. Section 343 of the 1996 Act requires that any future revisions to NRCS technical guides be made available for public notice and comment.

Process

Nine comments suggested that producers currently enrolled in the CRP should not be required to rebid if their land qualifies for enrollment. The comment was not clear on the basis on why existing acreage should be considered differently from acreage seeking enrollment for the first time. Requiring all expiring CRP acreage to be rebid will allow CCC to treat all eligible owners and operators on the same basis. Accordingly, this recommendation will not be accepted.

Fourteen comments suggested that clear guidelines for acceptance be published in advance to make the approval process observable and more predictable. CCC intends to continue its efforts ensuring that the public is fully informed and will make available programmatic information prior to enrollment. CCC also intends an element of competition between bids to increase the cost-effectiveness of the program.

Five comments suggested the conservation priority areas be taken out of the eligibility criteria and placed in the ranking process. The conservation priority areas allow acreage that does not meet the regular eligibility criteria but that meets some other identified environmental need to be offered for the program but to ensure maximum environmental benefits the offered acreage will compete with other acreage

being offered. The ranking process contains credit for being located in a conservation priority area to account for the cumulative environmental benefit that accrues within the CPA.

One comment supported the use of a ranking process that does not favor one habitat or environmental factor. However, the commenter also suggested some kind of additional consideration be given for a number of categories of acreage predominantly related to current CRP contracts. The ranking process contains credit for acreage where the appropriate cover is already established. Other comments suggested that additional credit be given for State and federal endangered, threatened, or candidate species. This comment was adopted.

One comment opposes the proposed rule's emphasis on tree plantings. However, the 1985 Act establishes, as a goal, not less than one-eighth of the land enrolled during 1991 through 2002 being established to trees and other specified covers. The ranking process will contain criteria that will encourage tree planting and other practices that have long-term retention after the contract expires.

One comment suggested the rule concentrate more on water quality than air quality. The overlapping nature of the natural resource factors yields multiple benefits that can rarely be accorded to one factor. For example, substantial air quality benefits have been obtained in the Great Plains States for land which was enrolled under earlier soil erosion criteria. The commenter also suggested the EI of 8 will overlook land that yields substantial benefits while it may have an EI of less than 8. The standard used to define highly erodible land provides a rational break for enrollment. Land with an EI of less than 8 which provides identified environmental benefits may be eligible under the conservation priority area authorized under § 1410.8. The ranking process will contain criteria that includes both water and air quality along with other factors. Lands with an EI less than 8 that contribute to air quality problems could be recommended as a conservation priority area.

Three comments suggested that land offered within national and State conservation priority areas should receive consideration in the ranking process. This comment was adopted.

Ranking Plans

One comment suggested the bid against each other process be eliminated and that the local FSA offices have the control of the selection of suitable CRP

land. This recommendation did not alternatively describe how the maximum environmental benefits could be obtained under the recommended scenario and will not be adopted.

A number of comments suggested that FSA work with State and local resource professionals. State FSA committees, in consultation with State Technical Committees will be afforded an opportunity prior to signup to develop a State ranking plan consistent with stated broad natural resource goals. Members of the State Technical Committees include Federal and State resource professionals and others.

One commenter suggested that the State Technical Committee, not CCC, should establish ranking factors, conservation priority areas, and priority purposes. However, the statutory mandate for State Technical Committees limits its authority to recommendations.

Natural Resource Factors

There were a number of comments suggesting that land under contract should be afforded some special status. Provided an appropriate cover is established, the ranking process will make an allowance because of the reduced establishment cost. However, it would be inappropriate and unduly complex to establish separate types of acreage to be evaluated for enrollment.

Another comment suggested that the natural resource factors should be feasible for all geographical regions. Enhancement of wildlife habitat, water quality, and air quality; reduction of erosion, and benefits from establishing longer term practices are goals applicable throughout the country. The ranking process incorporates all of these natural resource factors.

Other comments suggested that priority be given to acres that are within several miles of lakes, rivers, marshes, woody areas, greatest acreage of wetlands, to large blocks of land, and to upland acreage near wetlands. The ranking process will consider similar factors. The ranking process will consider areas within proximity of protected acreage. CRP in proximity to lakes, rivers, and marshes will also be considered.

Two comments suggested the ranking process needs to give better recognition and greater benefits to restoration of native vegetation or prairies and to mixed species of trees. The ranking process will take into account these comments.

One comment suggested that the playa basins be given a high ranking. Restoration of wetlands or land adjacent to playa basins will be considered in the ranking process.

One comment suggests that CRP eligibility should be designed to fit into all agricultural ecosystems and not be based solely on erosion index factors or designated conservation priority areas. The ranking process is designed to be a broad natural resource based formula to assist CCC in ranking offers.

Seventeen comments suggested that the final rule should include language that recognizes wildlife habitat as a co-objective of CRP and lands should be ranked based on wildlife objectives. § 1410.3 lists wildlife habitat as one of the objectives of CRP.

Comments relating to specific factors follow.

Wildlife Habitat Benefits

Eleven comments suggested that the final rule exclude wildlife habitat benefits from being considered as a separate criteria. Since CRP can prevent decline of wildlife populations thus avoiding the listing of a species under the Endangered Species Act and enhancing the recovery of an already listed species, CCC considers wildlife an appropriate factor. Other comments suggested that additional emphasis be placed on the enrollment of wildlife habitat benefits including higher priority, larger tracts, or requiring wildlife improvements. Vast improvements in the recovery of various wildlife have been attributed to CRP and will continue to be an integral part of CRP's purpose with reduction of soil erosion and improvement in water quality. CRP provides significant environmental and economic benefits through the enhancement of wildlife habitat.

Other comments suggested that consideration be given to large contiguous blocks of land. The relative size of acreage offered for CRP is considered during the ranking process. In general, for most terrestrial and bird species, large blocks of land are more valuable for wildlife.

Water Quality Benefits

One comment recommended the ranking process incorporate water conservation benefits. To the extent that improved water quality includes the conservation of water resources, this recommendation was adopted. It is otherwise unclear how an assurance can be obtained that the conserved water would not be devoted to other uses.

Two comments suggest that "drinking water quality" should be specifically mentioned as one of the factors for prioritizing offers. "Drinking water quality" is an inherent subset of the water quality factor.

Reduced Erosion

One comment suggested that soil erosion be changed to soil loss. The commenter did not make clear the basis upon which the comment was offered. Accordingly, the comment was not adopted.

Another comment suggested that enrollment priority be given to land that cannot be farmed under a conservation plan without using alternative conservation systems. There is a direct connection between the amount of credit awarded under the ranking process and the EI of the acreage offered which is consistent with the suggestion.

Likely Long-Term Benefits

Two comments recommended the elimination of tree planting and one of those comments recommended creating a prairie restoration practice and the establishment of native grasses will continue to be permitted in CRP.

Another comment suggested that grassland establishment rather than tree planting be a priority. The 1985 Act, however, establishes tree planting as a goal of the program. Accordingly, this recommendation will not be adopted.

Another comment suggested there was a "penalty" for the Great Plains associated with tree planting. However, there was no "penalty" or other reduction applicable to the Great Plains or any other geographic area proposed except that, of course, the cost of tree planting can differ in different regions and those costs must be taken into account.

Air Quality Benefits

Two comments suggested that wind erosion should be considered more heavily. A new natural resource factor for air quality was added to reflect the benefits from reduced wind erosion.

Cost Factor

A number of comments suggested a cost bonus factor that takes into account the reduced expenditures necessary on lands already in CRP with established cover. This comment was adopted.

One comment suggested not considering the rental rates in the next CRP signup. However, rental rates are key to the cost-effectiveness of the program. Therefore, this suggestion can not be adopted.

Five comments suggested that the renewal of present contracts should be considered first for re-enrollment because there would not be any cost-share expense for seeding. Because the goal of the CRP is to achieve specified conservation benefits, CCC does not believe it appropriate to consider a differentiation in classes of acreage.

However, the ranking process will consider whether the appropriate cover has been established.

§ 1410.32 CRP contract.

There were six comments that suggested the CRP contract not be binding, be revocable before contract approval at producer election, be subject to drainage district concurrence, or not have terms to require the refund of payments or interest upon termination. All of these suggested actions would diminish the value of the contract, would be contrary to 1985 Act, and, accordingly, have not been adopted.

Another comment suggested that the "Super Sod Buster" provisions be eliminated from contracts enrolled since 1991 because it is not consistent with earlier enrolled contracts. This provision and limit are required by the 1985 Act.

Nine comments suggested that various contract lengths be considered, including those with five-year increments starting at ten years as a minimum and going to at least 20 or 25-years. However, 1985 Act establishes the time period as 10 to 15-years. Accordingly, this suggestion was not adopted.

One comment suggested that extensions of existing CRP contracts should be allowed for wildlife benefits if the owner should choose this option. However, as indicated in the proposed rule, Congressional directives contained in the 1997 Appropriations Act effectively precluded the extension of any CRP contracts in FY 1997. Accordingly, this suggestion was not adopted.

One comment suggested more specific guidance regarding when production of an agricultural commodity on CRP land would be authorized. CCC is committed to the release of acreage under CRP contract only in severe circumstances, and consistent with 1985 Act. As such, it would not be appropriate to speculate as to what set of consequences would trigger the release of acreage for agricultural production.

Early Termination

Eleven comments supported the early termination provisions including those practices that are ineligible for early termination. Of those, one comment recommended a reduction in the minimum average width required to remain in CRP near a permanent water body. However, that reduction may not be environmentally appropriate in all areas of the country.

One comment suggested that filter strips may not need to be as wide as presently required. This

recommendation was adopted. The appropriate width of a filter strip will be determined by referring to the applicable FOTG.

Eleven comments suggested an expansion of the early-termination list of ineligible acres to include other grass or forested areas in reducing erosion, areas of high wildlife value, areas likely to have an impact on drinking water, or within 100 feet or adjacent to any temporary, semi-permanent or permanent stream, wetland, or other water body. However, early termination was authorized by the 1996 Act amendments to the 1985 Act. It is likely that the recommendations, taken collectively, would result in substantial acreage made ineligible for early termination, which is not consistent with the purpose of the early termination provision as authorized by the 1985 Act.

Two comments were not supportive of either the early termination proposal generally or the exemption of certain practices. However, the allowance, its limits, and the exemption of the particular practices mentioned, are all statutory.

§ 1410.33 Contract modifications.

The majority of comments received on this section pertained to contract extensions. However, the 1997 Appropriations Act effectively precluded the extension of any CRP contract in FY 1997.

One comment suggested using the expiration date of the original contract as the starting point for ten-year re-enrollments. Contracts for acreage accepted for new enrollment would not begin until the original contract expired.

Another comment suggested that CRP contracts should not be terminated when grain prices are high. The CRP still provides a reserve and CCC must maintain all of its options. Further, before any contract termination, CCC will carefully review the environmental impacts and net benefits.

§ 1410.34 Extended program protection.

Four comments suggested an extension of the existing program preservation agreement for five to ten years. The final rule reflects, consistent with the 1985 Act, that program preservation agreements will initially be effective for 5 years with an option to renew every five years. As indicated earlier, however, the importance of this provision has been changed by the change in the nature of commodity programs.

§ 1410.40 Cost-share payments.

Comments relating to cost-share payments generally involved suggestions on increasing or limiting rates, liberalizing applicability, or clarifying terminology. Four comments suggested modifying § 1410.40(g) in order to limit federal cost-share rates, in combination, to 50 percent. This comment is not adopted since except for special cases identified in the rule, the 1985 Act limits the program cost share to 50 percent. One comment suggested increasing cost-share rates for native grass establishment. Eight comments supported additional cost-sharing for wildlife habitat restoration, maintenance of plantings for wildlife corridors, eligible practices such as shallow water areas for wildlife and permanent wildlife habitat, and restoration of wetland hydrology. The 50 percent limit, as indicated, is statutory. As for rental rates, those rates can be adjusted as needed, consistent with statutory law.

Several comments suggested liberalized eligibility. Two comments suggested adding riparian buffers consisting mainly of woody plantings to the list for cost sharing of maintenance for two to four years. CCC provides a nominal amount in the annual rental payment for maintenance requirements associated with the conservation plan. Two comments suggested allowing cost-share to increase species diversity of cover plantings. Eight comments supported cost-share for replacing or restoring practices as needed to achieve adequate wildlife habitat. Cost-share for diversifying cover previously established and for replacing covers that do not become established is generally authorized. One comment suggested cost-share for fencing and water impoundment on CRP acres. This provision is available for certain practices. One comment suggested providing cost-share for prescribed burning in young longleaf pine plantings. Habitat disturbance such as fire is often an important part of the maintenance of healthy biological systems. By statute, cost-share is not available on maintenance of existing practices except in very limited cases. However, rental incentives are used as needed to encourage enrollment of these activities. One comment suggested that language should be added that State wildlife agencies and other nonprofit conservation organizations should be eligible for cost-share assistance not to exceed 100 percent of the cost. Another comment suggested that CRP land should not be excluded from the benefits of other Federal cost-share

programs. These comments raise the same statutory issue and have not been adopted.

One comment suggested allowing a three-year establishment period for softwood plantings and 50-percent cost-share for hardwood planting. A three-year establishment period for softwood planting is not necessary because the planting effectiveness for such trees is generally greater than for hardwood species. The three year allowance for hardwood trees is established by the 1985 Act and the cost-share rates are set in accordance with that Act. Another comment suggested that maintenance on tree projects should be kept to the minimum needed to establish the trees. Forest management plans stipulate maintenance needs and are not addressed by the proposed rule. One comment suggested that a maintenance allowance be included in the law to eradicate noxious weeds and that payment reductions for noncompliance should stay in the State to pay for weed control. No provisions exist in the 1985 Act for payments to States for control of noxious weeds or for specific payments for weed control in general. Rental rates, however, will provide incentives for farmers to comply with all CRP provisions.

One comment requested clarification between cost-share payments and rental incentives. A cost-share payment is required by the 1985 Act to assist participants in establishing all eligible conservation practices, and is based on actual costs at a specific site. Rental incentives are designed to encourage particular enrollments and do not, as such, involve a percentage share of particular costs incurred. With a rental incentive, any special costs will be strictly the burden of the participant.

\$ 1410.41 Levels and rates for cost-share payments.

Comments on cost-share levels and rates generally recommended either limiting or increasing practice eligibility or rates made available to producers. Two comments suggest a \$3,500 limit on the total cost-share available to any landowner and another suggests limiting cost-share to 50 percent regardless of the source of the cost. Rate suggestions included one comment that recommended increasing cost-share assistance to 75 percent for limited resource producers and one that recommended a 50 percent incentive payment be paid to cover all costs of wetland restoration. The 50 percent cost-share rate is statutory and the suggested \$3,500 limit would unduly limit participation in the program. However, participants may receive

additional funding through State or private organizations. Five comments supported the use of cost-share assistance to encourage restoration. In addition to eligible wetlands, restoration activities on other lands may also be included by CCC after carefully reviewing all environmental factors and cost.

\$ 1410.42 Annual rental payments.

Ninety-seven respondents supported the proposal to base the schedule of rates that FSA will pay for different soil types within a county on the local average dryland cash rental estimate or similar concept. Of those, 12 comments suggested using a crop share or the cash equivalent rather than cash rent. Six other comments suggested basing the rental payments on the market value or sale price of the ground. One respondent stated rates in counties influenced by urban areas should be higher and another comment urged that rates be lowered so that ground will return to production.

Ninety-four respondents indicated opposition to the manner in which CRP rental rates were proposed to be established. Of those, 36 suggested that because the more erodible and fragile type soils will have a lower rental rate, they may be less likely to be bid into CRP or more likely to be removed by the producer than more productive soils. Three of the comments simply stated that the new price structure would be devastating or would not work but offered no basis for the comments or suggestion for improvements. CCC will not be constrained to using only a dryland basis in order in establishing maximum payment rates to meet program and environmental goals and requirements.

Fifty-two respondents urged that rental rates remain at the current contract rate. A few urged the same rate for five years or to use the current CRP contract rates unless the cash rental equivalent were higher. Forty-six respondents recommended that current CRP rental rates simply be reduced with suggested amounts ranging from 60 to 90 percent reduction. A few also suggested reducing payments for participants who used cover for haying and grazing or to thin tree plantings.

Several comments suggested using other methods for setting the rental payments such as using either the average county cash rental rate or the average CRP annual rental payment from signups one through 13; using a simple, valid formula for each county developed by the Economic Research Service; setting rates equivalent to the WBP rates; setting a single minimum

rental rate for all soils in the State of North Dakota; using the estimated CCC program payment yield; reducing existing contract rates by 10 percent per year until optimum levels are reached; or using a five-year rolling average of an unspecified calculation. Several respondents suggested that rates be increased to provide for taxes and inflation or to take into consideration CCC production flexibility contracts, and two comments recommended local conservation districts have a role in estimating payment rates. Twenty-one respondents urged that rental payments be set at a fair rate that is high enough to keep ground in the CRP, but made no comment regarding the efficacy of the proposed method. One comment suggested that rates provide for calculations to reflect fair market values in riparian areas.

As indicated previously, the report accompanying the 1997 Appropriations Act reaffirmed previous Congressional direction that CRP contract rates should not exceed the prevailing rental rates for comparable land in the local area. Various methodologies for determining CRP payment rates equivalent to the prevailing local rental rates were reviewed by an interagency workgroup and the determination was made that the local average cash rental rate as determined by the county FSA committees, adjusted for the relative productivity of the soil, would provide the most accurate and uniform methodology. Instructions to county FSA committees for establishing the payment rates provided that in areas where share rents are most common they use the cash equivalent of share rents. Instructions further provided for taking into consideration, where necessary, hydric soils whose productivity is impacted by the presence or absence of drainage systems. The county average cash rental rate, or equivalent, as established by county FSA committees would inherently reflect distance to market and other conditions affecting rental rates in the county. The county FSA committees received recommendations from local teams.

Participants who are approved to hay and graze established long-term vegetative cover under emergency conditions in accordance with an approved conservation plan are subject to a reduction of their CRP annual payment. Similar provisions will be implemented for participants that conduct normal forestry maintenance in accordance with an approved conservation plan.

A few comments addressed the soil rental rate methodology. One

respondent recommended that a single predominant soil type be used per participant rather than multiple soil types in a field. Three comments suggested that rates on similar soil types should be the same from State to State, and another recommended that the same rates be used in a county for all producers having the same soil type. One respondent suggested allowing different soil rental rates for the same soil within the same county based on different distances to markets and other conditions. Another comment recommended adding a premium based on the erodibility index of the soil. A few comments suggested that prices be set to save the time and expense of bidding.

CRP operating procedure provides that up to three predominant soils in a field be used in determining the soil rental rate. This approach is designed to help ensure the equivalent treatment of fields having more than one soil type. Interested applicants may make offers to enroll acreage in the CRP during an announced signup period. The offers will compete for enrollment. The maximum amount that CCC will pay for an offer is determined and made known to the applicant at the time of application. Although the same soil type may occur in more than one county or State, other market factors may the soil rental rate to differ. Soil rental rates for the same soil type within the same county, however, are expected to be consistent.

Forty-one comments suggested financial incentives be provided for various purposes. The majority of comments encouraged financial incentives to promote installation of various practices considered of high environmental value. Two comments suggested the State Technical Committee should have flexibility to establish practice and incentives of the greatest value in their State. One comment strongly opposed incentives.

Based on the comments received, CCC has determined to continue to offer incentives through an increased annual rental payment for certain practices of high environmental value, including but not limited to field windbreaks, grassed waterways, filter strips, riparian buffers, and acreage located with an approved EPA wellhead protection area. Incentives and practices available will continue to be determined at the national level; eligibility and technical suitability of the appropriate practice will continue to be determined for each offer at the local level.

Several comments were received regarding other aspects of the annual rental payments. Eight comments

suggested that the \$50,000 payment limitation is too strict. Seven comments urged that interest be paid if payments are more than 30 days past due. Other respondents suggested that CRP payments be considered rental income for tax purposes, that the three entity rule, used in applying the payment limit, be eliminated, and that the lifetime payment limitation may limit the amount of targeted land in previous signups. Two comments recommended providing compensation to participants for practice maintenance, and one respondent suggested dividing payments for land sold at public auction according to State law.

Section 1234(f) of the 1985 Act requires the \$50,000 payment limitation. CCC has implemented the provisions of the limitation consistent with the implementation of other CCC programs with similar payment limitation requirements. Provided the participant has otherwise met all requirements for payment, if the CRP payment is not issued to the participant within 30 days after the date county FSA offices receive notification to make annual rental payments, the participant may be eligible to receive interest in accordance with existing procedures. Program payments issued are reported to the Internal Revenue Service; determination of the treatment of income for tax purposes is the responsibility of the participant. Regarding the lifetime original contract limitation of \$50,000, this provision would not allow farmers who had transferred land with CRP contracts to acquire new contracts if the total of the old and new payments would exceed \$50,000 per year even though the farmer would currently only be receiving the new payments of under \$50,000 per year. This provision was designed to avoid circumvention of the three-year ownership rule. CCC has removed this provision from the final rule because the three-year ownership rule has been modified by the 1985 Act to be a one-year ownership rule. The maintenance suggestion has been addressed earlier. For land sold at auction, CRP payments, if due, will be divided in accordance with current rules so as to allow for uniform practice. CCC payment are not subject to the requirements imposed by State law.

§ 1410.50 State enhancement program.

Seven comments supported the conservation reserve enhancement program including a detailed proposal outlining minimum requirements for eligibility. State Governments may develop conservation reserve enhancement program proposals and

submit to their respective State FSA office. An ideal use of such proposals would be to address Endangered Species Act concerns; however, proposals addressing conservation and environmental objectives of the State and nation will also be considered.

Two comments suggested that the waiver of the \$50,000 payment limitation be applied to private and nonprofit conservation organizations in addition to a State, a political subdivision, or agency thereof. The 1985 Act limits the waiver of the \$50,000 payment limitation only for States, a political subdivision, or agency. Therefore, this recommendation can not be adopted.

One comment suggested that efforts be made to protect environmentally sensitive lands in States that are able to provide additional funds to secure longer term or permanent easements. The final rule does not preclude such a program.

One comment suggested that CCC work with States to provide cost-share assistance with respect to conservation efforts such as the control of noxious weeds on CRP land. Control of noxious weeds is already required as a condition for enrollment in CRP. Maintenance costs are the responsibility of the participant. There is no authority for the suggested additional payments.

§ 1410.51 Transfer of land.

Four comments were received concerning this section. Two comments suggested the same provisions in this section for lands acquired by Federal agencies also be applied when a State or local agency or private organization acquires a property or interest in CRP acreage with the intent of keeping it in a conservation use. Another comment suggested that consideration should be given to maintaining a contract for environmentally sensitive land even though the ownership may be transferred.

Any State or local agency or private organization participating in CRP would be subject to the provisions in this section. The special provisions for acquisitions by Federal agencies reflect that other Federal agencies cannot be contract participants and have a special opportunity for cooperation with the operating agency. With respect to the other comments, the CRP contract is an agreement with the owner or operator and does not attach any restrictions to property titles. Accordingly, once ownership transfers the new owner is not obligated to the terms and conditions of the contract unless the new owner decides to become a participant as a successor in interest.

One comment suggested that maximum flexibility be allowed for Federal, State, or local agencies or private organizations or individuals to purchase lands enrolled in CRP if it is likely that the land will remain in a cover similar to that established under the CRP. It is unclear how this comment relates to the proposed rule.

Landowners who enroll acreage in CRP maintain their ownership interest. The decision to transfer ownership remains with the landowner. Particular proposals for enhancing the program through agreements with other agencies can be handled as they arise.

§ 1410.52 Violations.

Four comments were received regarding violation provisions. Three comments suggested that an explicit provision for relief in the case of a good-faith violation, similar to the HEL good-faith provisions, is appropriate. The comments also suggested the loss of all payments should only apply to those found using a scheme or device. Another comment suggests violations should result in more severe penalties to promote active annual control of all weeds.

This section conforms with the provisions of the 1985 Act. CCC may, in its discretion, reduce a demand for a refund to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

Four comments supported and 11 comments opposed the landlord/tenant provisions of the proposed rule. Of those supporting the provisions, three suggested that landowners be allowed to discharge the tenant on land with expiring CRP contract acres being rebid into the program. Of those opposing the provisions, four suggested that the removal of tenants from the CRP contract would adversely impact the local economy and one expressed concern about the lack of protection for tenants, particularly with absentee landowners. Another comment expressed concern about the operator receiving a share of the payment. None of the recommendations were adopted except with respect to the issue of tenants on farms with existing CRP contracts re-bid into the program. Tenants are required to be on new CRP contracts if the tenant has an interest in the acreage being offered for enrollment. For land which is subject of a re-bid, the tenant must also be expected to have an interest when the new contract is begun.

If at some time during the life of the contract the tenant fails to maintain tenancy, under applicable State laws, the tenant can be removed from such contract. These rules attempt to strike a balance between the interests of landlords and tenants by protecting active tenants but not unnecessarily extending that protection to two full CRP periods when the relationship between the landlord and tenant has effectively ended. The new rules encourage landlords and tenants to have a firm understanding of their relationship with respect to each other with respect to the CRP for the full CRP period and allow greater flexibility in handling these situations by allowing a greater opportunity for taking the facts of a particular case into account.

One comment suggested the relationship and share of payments may be somewhat different for re-enrolled land. The comment suggests the issue be addressed very carefully and clarified in the final rule. Re-enrolled CRP acreage will be subject to a new contract. If the interest of the participants in the farming operation has changed their share of the payment on the new contract would, presumably, be different than on the expiring contract.

§ 1410.60 Scheme or device.

One comment suggested the proposed wording was too harsh and suggested that if a prima facie case can be made then payments should be made if the issue is not fully resolved by the administrative appeals process and, in emergencies, the funds should be held in escrow. The terms of the rule are intended to ensure that the integrity of the program is maintained and that language is needed. Given the severity of the prior instances involving schemes or devices to defeat the objectives of the program, CCC believes that the remedy provided for in the rule is appropriate. Holding funds in escrow is not needed and would be administratively burdensome. Therefore, this recommendation was not adopted.

§ 1410.61 Filing of false claims.

The proposed rule provided that when a false claim is filed the CRP contract may be terminated. One comment suggested a requirement that the contract be terminated. However, to do so could unnecessarily restrict CCC's options in handling special cases. Therefore, this recommendation was not adopted.

§ 1410.62 Miscellaneous.

Several comments were received regarding: requiring CRP acreage to meet conservation compliance requirements

before being used for crop production; demonstration or research project areas; cropland classification with crop acreage bases remaining intact; providing incentives for contour strips to reduce wind erosion; and special mitigation provisions for emergency natural resource problems or wetland banking. The final rule has not been revised to require that CRP acreage meet conservation compliance requirements before being used for crop production. There is no statutory authority to enforce such a provision. CRP acreage meets the conservation compliance requirements while it is under contract providing the conservation plan is being followed. In addition, no substantive revisions were made regarding demonstration or research projects because paragraph (g) of this section authorizes the approval of such projects. Further, the 1996 Act eliminated crop acreage bases; therefore, for new contracts, there are no bases to preserve. However, cropland status will continue to be maintained through the CRP contract period. The final rule did not need to be revised to incorporate incentives for contour strips because § 1410.42 already allows for incentives for various practices. However, the final rule has been revised, in paragraph (h) of this section, to provide for wetland mitigation banking.

One comment suggested that in paragraph (f), with respect to cropland status, the following be inserted after the word "classification": "except as provided in § 1410.34." It is unnecessary to add this language because acreage subject to the provisions in § 1410.34 is still governed by the terms and conditions of the contract including the cropland classification provision.

Four comments recommended practices for land coming out of CRP. CRP practices provide for long term resource conservation or protection. Land coming out of the CRP will be subject to the provisions of 7 CFR part 12. Requiring more would be contrary to the temporary term of the CRP contract and would not be cost-effective. USDA will continue its information efforts about options available under USDA and other programs regarding conserving uses.

One comment suggested that field visits be required for all CRP land that is reoffered in future signups before the acreage is accepted. This recommendation has not been adopted due to the cost-prohibitive nature of the volume of work associated with enrolling up to 24 million acres.

§ 1410.63 Permissive uses.

Thirteen comments were received for this section. Of those, one comment suggested that participants be allowed to do anything with CRP acres as long as erosion is controlled. Another suggested producers be allowed to harvest grass seed on CRP acres. These recommendations were not adopted. According to the 1985 Act, producers must agree that there will be no haying or grazing of the CRP acreage and that there be no use of the CRP acreage for commercial purposes, except under specified conditions. There are additional, but limited, allowances for the production of trees on CRP acreage. In addition, the purposes of CRP include more than just soil erosion. To only focus on one purpose may unnecessarily damage wildlife, water quality, or other important natural resource goals. Further, there is no authority to use the CRP for producers seeking an opportunity to farm.

One comment suggested the rule should encourage the injection of animal waste on CRP acres without prior approval from the county committee. This recommendation will not be adopted. County FSA committees have the responsibility to ensure that the integrity of CCC programs is maintained. The injection of animal waste could cause significant environmental damage. To ensure the objectives of the CRP are met, county FSA committees will continue monitoring activities on CRP acreage.

One comment suggested contract holders be required to participate financially if block spraying programs are implemented. The 1985 Act provides no authority to implement this suggestion. Participants are required to follow a conservation plan of operation that includes maintenance provisions for the length of the contract period. Those who fail to comply with the plan are subject to payment reductions or termination of the contract. Therefore, the final rule has not been revised to adopt this recommendation.

Several comments suggested that landowners should allow the public open access to enrolled acres for hunting. Another comment suggested hunters be required to purchase a wildlife stamp. The funds received from the sale would be used to enroll additional acreage in the program. The CRP is a contractual relationship between CCC and producers. The 1985 Act does not provide any authority for requiring public hunting on CRP acreage.

One comment suggested allowing burning as a permissive use. Burning is currently permitted in areas where

NRCS determines the practice is normal, customary, needed, and in compliance with all applicable environmental rules for the CRP acreage.

Substantive Changes Compared to the Proposed Rule

Substantive changes compared to the proposed rule include:

§ 1410.2 Definitions.

The proposed rule defined Highly Erodible Land (HEL) as certain acreage enrolled in CRP before January 1, 1995, which is classified by NRCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator;

(2) Being predominantly Land Capability Classes VI, VII, or VIII;

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(i) An erodibility index equal to or greater than 8 for either wind or water erosion; and

(ii) An erosion rate greater than T.

The proposed rule defined predominantly highly erodible field as:

(1) a field in which at least 66⅔ percent of the land in such field is highly erodible; or

(2) a field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

The definitions of HEL and predominantly highly erodible field were amended in the final rule to be consistent with the definitions found in 7 CFR part 12. The Department determined to use, to the extent practicable, the same criteria for the CRP as is used for conservation compliance when determining if acreage is HEL and if a field is predominately highly erodible. Except for redefined fields, in order to avoid abuse, the change will allow land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs.

§ 1410.6 Eligible land.

§ 1410.6 was rewritten for the final rule to provide clearer, more concise provisions regarding land eligibility for the CRP. In addition, the final rule amended § 1410.6 by:

(1) removing the minimum acreage for a manageable unit requirement. Such requirements were better determined at

the local level by approved local technical authorities based on the actual site;

(2) adding marginal pasture land that is suitable for use as a riparian buffer so long as it is planted to trees, as determined by NRCS. CRP could cost-effectively provide substantial water quality, erosion, wildlife, and other environmental benefits by enrolling such acreage.

(3) changing the manner in which the EI is calculated, except for redefined fields, to be consistent with the conservation compliance provisions found in 7 CFR part 12. The proposed rule required an EI of 8 or greater, calculated by using the weighted average of the EI's of Soil Map Units within a field, to determine if land was basically eligible for enrollment in the CRP. The final rule uses the same EI value of 8 or greater to determine if land is basically eligible for enrollment in the CRP; however, the EI is calculated according to the conservation compliance provisions in 7 CFR part 12 if the field has not been redefined. The change will allow most land that is subject to conservation compliance to be basically eligible for the CRP and will provide consistency between the two programs. For redefined fields, the EI of 8 will continue to be calculated by using the weighted average of the EI's of Soil Map Units within the field;

(4) generally making acreage associated with noncropped wetlands, as determined by the Deputy Administrator, eligible for enrollment in the CRP if such acreage meets the cropping requirements. Such acreage provides high environmental benefits, such as erosion control, wetland protection, wildlife habitat, and water quality, and can be a cost-effective use of the CRP;

(5) changing the term "farmed wetlands" to "cropped wetlands." The proposed rule inadvertently listed "farmed wetlands" as eligible for enrollment in the CRP. The final rule has been amended to correct this oversight.

(6) making eligible field margins which are incidental to the planting of crops as determined appropriate by the Deputy Administrator.

§ 1410.31 Acceptability of offers.

The final rule amended § 1410.31 to add "air quality" as a possible factor that may be included in the evaluation of contract offers. Air quality was not included in the proposed rule. The CRP has proven to be an efficient tool in improving the air quality throughout the nation by reducing the amount of air pollution caused by blowing dust from

cropland production. Accordingly, it has been determined that air quality is an appropriate factor to be used in the evaluation of contract offers.

§ 1410.41 Levels and rates for cost-share payments.

The final rule amends § 1410.41 to add language clarifying that participants may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law. The 1985 Act prohibits participants from receiving or retaining CRP cost-share assistance in such instances. However, other non-Federal cost-share assistance may be available.

§ 1410.42 Annual rental payments.

The proposed rule provided that CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with the provisions of § 1410.51 plus the total annual rental payments called for in the offer) exceed \$50,000. This applied regardless of the current level of payments received by the participants. The final rule amends § 1410.42 to remove this provision. CCC determined that changes in the 1985 Act made this provision unnecessary. It is important to note this is does not affect the \$50,000 annual payment limitation for all current payments provided for in the 1985 Act and as explained earlier.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practices and procedures, Base protection, Conservation plan, Contracts, Environmental indicators, Natural resources, and Technical assistance.

Accordingly, 7 CFR part 704 is removed and part 1410 is revised as follows:

PART 704—[REMOVED]

1. Part 704 is removed.
2. Part 1410 is revised to read as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

Sec.

- 1410.1 Administration.
- 1410.2 Definitions.
- 1410.3 General description.
- 1410.4 Maximum county average.
- 1410.5 Eligible persons.
- 1410.6 Eligible land.
- 1410.7 Duration of contracts.
- 1410.8 Conservation priority areas.
- 1410.9 Alley-cropping.

- 1410.10 Conversion to trees.
- 1410.11 Restoration of wetlands.
- 1410.12–1410.19 [Reserved].
- 1410.20 Obligations of participant.
- 1410.21 Obligations of the Commodity Credit Corporation.
- 1410.22 Conservation plan.
- 1410.23 Eligible practices.
- 1410.24–1410.29 [Reserved].
- 1410.30 Signup.
- 1410.31 Acceptability of offers.
- 1410.32 CRP contract.
- 1410.33 Contract modifications.
- 1410.34 Extended program protection.
- 1410.35–1410.39 [Reserved].
- 1410.40 Cost-share payments.
- 1410.41 Levels and rates for cost-share payments.
- 1410.42 Annual rental payments.
- 1410.43 Method of payment.
- 1410.44–1410.49 [Reserved].
- 1410.50 State enhancement program.
- 1410.51 Transfer of land.
- 1410.52 Violations.
- 1410.53 Executed CRP contract not in conformity with regulations.
- 1410.54 Performance based upon advice or action of the Department.
- 1410.55 Access to land under contract.
- 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.
- 1410.57 Payments not subject to claims.
- 1410.58 Assignments.
- 1410.59 Appeals.
- 1410.60 Scheme or device.
- 1410.61 Filing of false claims.
- 1410.62 Miscellaneous.
- 1410.63 Permissive uses.
- 1410.64 Paperwork Reduction Act assigned numbers.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

§ 1410.1 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees (“State committees” and “county committees,” respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, the Administrator, FSA, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Notwithstanding other provisions of the preceding paragraphs of this section, the EI, suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Natural Resource Conservation Service (NRCS) or any other non-USDA source approved by NRCS, in accordance with the Field Office Technical Guide of NRCS or other guidelines deemed appropriate by the NRCS, except that no such determination by NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(g) State committees, with NRCS, may develop a State evaluation process to rank acreage based on State-specific goals and objectives where such an evaluation process would further the goals of CRP. Such State committees may choose between developing a State ranking system or using the national ranking system. States’ ranking processes shall be developed based on recommendations from State Technical Committees, follow national guidelines, and be approved by the Deputy Administrator.

(h) CCC may consult with the Forest Service (FS), a State forestry agency, or other organization for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice or as a component of a practice.

(i) CCC may consult with the Cooperative State Research, Education, and Extension Service to coordinate a related information and education program as deemed appropriate to implement the Conservation Reserve Program (CRP).

(j) CCC may consult with the U.S. Fish and Wildlife Service (FWS) or State wildlife agencies for such assistance as

is determined necessary by CCC to implement the CRP.

(k) The regulations governing the CRP as of February 11, 1997, shall continue to be applicable to contracts in effect as of that date. The regulations set forth in this part as of February 12, 1997, shall be applicable to contracts executed on or after that date.

§ 1410.2 Definitions.

The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one-trip planters or sugar cane planted or produced in a State or alfalfa and other multi year grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan approved by the local conservation district and CCC.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended.

Alternative perennials means woody species of plants grown on certain CRP acres, including, but not limited to shrubs, bushes, and vines.

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP.

Applicant means a person who submits an offer to CCC to enter into a CRP contract.

Arid area means acreage located west of the 100th meridian that receives less than 25 inches of average annual precipitation.

Bid or offer means, unless the context indicates otherwise, if required by CCC, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the CRP.

Conservation district means a political subdivision of a State, Native American Tribe, or territory, organized pursuant to the State or territorial soil conservation

district law, or Tribal law. The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation plan means a record of the participant's decisions, and supporting information, for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures needed to solve identified natural resource problems by devoting eligible land to permanent vegetative cover, trees, water, or other comparable measures.

Conservation priority area means areas so designated by the Deputy Administrator with actual and adverse water quality or habitat impacts related to agricultural production activities or to assist agricultural producers to comply with Federal and State environmental laws and to meet other conservation needs, such as for air quality, as determined by the Deputy Administrator.

Contour grass strip means a vegetation area that follows the contour of the land, the width of which is determined using the appropriate FOTG and which is so designated by a conservation plan developed under this part.

Contract period means the term of the contract which shall be not less than 10, nor more than 15, years.

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract.

Cropland means land defined as cropland in accordance with the provisions of part 718 of this title, except for land in terraces that are no longer capable of being cropped.

Cropped wetlands means farmed wetlands and wetlands farmed under natural conditions.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Environmental Quality Incentives Program (EQIP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into contracts with CCC to address threats to soil, water, and related natural resources and for other purposes.

Erodibility index (EI) means the factor, as calculated by NRCS, used to determine the inherent erodibility of a soil by dividing the potential average annual rate of erosion without management for each soil by the predetermined T value for the soil.

Farmed wetlands means land defined as farmed wetlands in accordance with the provisions of part 12 of this title.

Federally owned land means land owned by the Federal Government or any department, instrumentality, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, as determined by CCC.

Field Office Technical Guide (FOTG) means the official NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Field windbreak, shelterbelt, and living snowfence mean a vegetative barrier with a linear configuration composed of trees, shrubs, or other vegetation, as determined by CCC, which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, wildlife habitat, and energy conservation.

Filter strip means a strip or area of vegetation the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality and of a width determined appropriate for the purpose by the applicable FOTG.

Highly erodible land (HEL) means that land determined to be HEL in accordance with the provisions of part 12 of this title.

Landlord means a person who rents or leases acreage to another person.

Local FSA office means the FSA office serving the area in which the FSA records are located for the farm or ranch.

Operator means a person who is in general control of the farming operation on the farm, as determined by CCC.

Owner means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly and a person who has life-estate in a property.

Participant means an owner or operator or tenant who has entered into a contract.

Payment period means the 10- to 15-year contract period for which the participant receives an annual rental payment.

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees.

Permanent wildlife habitat means a permanent vegetative cover with the specific purpose of providing habitat, food, or cover for wildlife and protecting other environmental concerns.

Practice means a conservation, wildlife habitat, or water quality measure with appropriate operations and management as agreed to in the conservation plan to accomplish the desired program objectives according to CRP and NRCS standards and specifications as a part of a conservation management system.

Predominantly highly erodible field means that land defined has a predominantly highly field in accordance with the provisions of part 12 of this title.

Quota means the pounds of tobacco or peanuts or other commodity allocated to a farm for commodity support purposes or control pursuant to the terms of the Agricultural Adjustment Act of 1938, as amended.

Riparian buffer means a strip or area of vegetation of a width determined appropriate by the applicable FOTG the purpose of which is to remove nutrients, sediment, organic matter, pesticides, and other pollutants from surface runoff and subsurface flow by deposition, absorption, plant uptake, and other processes, thereby reducing pollution and protecting surface water and subsurface water quality which are also intended to provide shade to reduce water temperature for improved habitat for aquatic organisms and supply large woody debris for aquatic organisms and habitat for wildlife.

Soil loss tolerance (T) means the maximum average annual erosion rate specified in the FOTG that will not adversely impact the long term productivity of the soil.

State Technical Committee means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the U.S. Department of Agriculture.

State water quality priority areas means any area so designated by the State committee and NRCS, in consultation with the State Technical Committee where agricultural nonpoint

source pollutants or agricultural point source pollutants contribute or create the potential for failure to meet applicable water quality standards or the goals and requirements of Federal or State water quality laws. These areas may include areas designated under section 319 of the Federal Water Pollution Control Act (33 U.S.C. 1329) as water quality protection areas, sole source aquifers or other designated areas that result from agricultural nonpoint sources of pollution. Acreage in these areas may be determined eligible as conservation priority areas.

Technical assistance means the assistance provided in connection with the CRP to owners or operators by NRCS, FS, or another source as approved by the NRCS or FS, as appropriate, in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices, and forestry issues.

Water bank program (WBP) means the program authorized by the Water Bank Act of 1970, as amended, in which eligible persons enter into 10-year agreements to preserve, restore, and improve wetlands.

Water cover means flooding of land by water either to develop or restore shallow water areas for wildlife or wetlands, or as a result of a natural disaster.

Wellhead protection area means the area designated by the appropriate State agency with an Environmental Protection Agency approved Wellhead Protection Program for water being drawn for public use, as defined for public use by the Safe Drinking Water Act, as amended.

Wetland means land defined as wetland in accordance with provisions of part 12 of this title.

Wetlands farmed under natural conditions means land defined as wetlands farmed under natural conditions in accordance with provisions of part 12 of this title.

Wetlands Reserve Program (WRP) means the program authorized by the Food Security Act of 1985, as amended, in which eligible persons enter into long-term agreements to restore and protect wetlands.

§1410.3 General description.

(a) Under the CRP, CCC will enter into contracts with eligible participants to convert eligible land to a conserving use for a period of time of not less than 10 nor more than 15 years in return for financial and technical assistance.

(b) A conservation plan for eligible acreage must be obtained by a participant which must be approved by

the conservation district in which the lands are located unless the conservation district declines to review the plan in which case NRCS may take such further action as is needed to account for lack of such review.

(c) The objectives of the CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including encouraging more permanent conservation practices and tree planting.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental or easement payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage under any other provision of law, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or otherwise, exceed the cost of the practice, as determined by CCC.

§1410.4 Maximum county acreage.

The maximum acreage which may be placed in the CRP and the WRP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject, in the aggregate, to a CRP or WRP easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§1410.5 Eligible persons.

(a) In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner, operator, or tenant of eligible land and:

(1) If an operator of eligible land, seeking to participate without the owner, must have operated such land for at least 12 months prior to the close of the applicable signup period and must provide satisfactory evidence that such operator will be in control of such eligible land for the full term of the CRP contract period;

(2) If an owner of eligible land, must have owned such land for at least 12 months prior to the close of the applicable signup period, unless:

(i) The new owner acquired such land by will or succession as a result of the death of the previous owner;

(ii) The only ownership change in the 12 month period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with State law;

(iii) As determined by the Deputy Administrator, the circumstances of the acquisition are such that present adequate assurance that the new owner of such eligible land did not acquire such land for the purpose of placing it in the CRP; or

(3) If a tenant, the tenant is a participant with an eligible owner or operator.

(b) Notwithstanding paragraph (a) of this section, under continuous signup provisions authorized by § 1410.30, an otherwise eligible person must have owned or operated, as appropriate, the eligible land for at least 12 months prior to submission of an offer.

§ 1410.6 Eligible land.

(a) In order to be eligible to be placed in the CRP, land:

(1) Must be cropland that:

(i) Has been annually planted or considered planted to an agricultural commodity in 2 of the 5 most recent crop years, as determined by the Deputy Administrator, provided further that field margins which are incidental to the planting of crops may also be considered qualifying cropland to the extent determined appropriate by the Deputy Administrator; and

(ii) Is physically and legally capable of being planted in a normal manner to an agricultural commodity, as determined by the Deputy Administrator.

(2) Must be marginal pasture land, as determined by the Deputy Administrator, that:

(i) Is enrolled or has recently been enrolled in the WBP provided:

(A) The acreage is in the final year of the WBP agreement or, if not in the final year of the WBP agreement and only for enrollments in the CRP for FY 1997, is acreage for which the WBP agreement expired on December 31, 1996, where the land would be considered in compliance if such agreement was still in effect, as determined by the Deputy Administrator;

(B) The acreage is not classified as naturally occurring type 3 through 7 wetlands, as determined by the Deputy Administrator regardless of whether the acreage is or is not protected by a Federal agency easement or mortgage restriction (types 3 through 7 wetlands that are normally artificially flooded shall not be precluded from eligibility), and;

(C) Enrollment in CRP would enhance the environmental benefits of the site, as determined by Deputy Administrator; or

(ii) Is determined to be suitable for use as a riparian buffer. A field or portion of a field of marginal pasture land may be considered to be suitable for use as a riparian buffer only if, as determined by NRCS, it:

(A) Is located adjacent to permanent stream corridors excluding corridors that are considered gullies or sod waterways; and

(B) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(3) Must be acreage currently enrolled in the CRP provided the scheduled expiration date of the current CRP contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator, provided the acreage is otherwise eligible according to this part, as determined by the Deputy Administrator.

(b) Any land qualifying under the provisions of paragraph (a)(1) must also, to be eligible for a contract:

(1) Be a field or portion of a field determined to be suitable for use as a permanent wildlife habitat, filter strip, riparian buffer, contour grass strip, grass waterway, field windbreak, shelterbelt, living snowfence, other uses as may be determined by the Deputy Administrator, vegetation on salinity producing areas, including any applicable recharge area, or any area determined eligible for CRP based on wetland or wellhead protection area criteria to be eligible to be placed in the CRP. A field or portion of a field may be considered to be suitable for use as a filter strip or riparian buffer only if it, as determined by NRCS:

(i) Is located adjacent to a stream, other waterbody of a permanent nature (such as a lake, pond, or sinkhole), or wetland excluding such areas as gullies or sod waterways; and

(ii) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; or

(2) (i) Be a field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by NRCS. In addition such land must:

(A) Be expected to flood a minimum of once every 10 years; and

(B) Have evidence of scour erosion as a result of such flooding.

(ii) To the extent practicable, be the actual affected cropland areas of a field;

however, the entire cropland area of an eligible field may be enrolled if:

(A) The size of the field is 9 acres or less; or

(B) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(iii) If the full field is not eligible for enrollment under this paragraph (b)(2), be that portion of the cropland between the waterbody and the inland limit of the scour erosion together with, as determined by the Deputy

Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(iv) Be planted to an appropriate tree species according to the FOTG, unless tree planting is determined to be inappropriate by NRCS, in consultation with Forest Service, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover in accordance with the FOTG; or

(3) Be contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under other Federal programs, including but not limited to EQIP authorized under part 1466 of this chapter; or

(4) Be devoted to certain covers, as determined by the Deputy Administrator, which are established and maintained according to the FOTG provided such acreage is not required to be maintained as such under any life-span obligations, as determined by the Deputy Administrator; or

(5) Be non-irrigated or irrigated cropland which produces or serves as the recharge area, as determined by the Deputy Administrator, for saline seeps, or acreage which is functionally related to such saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface; or

(6) Be considered HEL according to conservation compliance provisions under part 12 of this chapter; or

(7) For redefined fields, have an EI of greater than or equal to 8, calculated by using the weighted average of the EI's of soil map units within the field; or

(8) Be within a public wellhead protection area or in an approved Hydrologic Unit Area; or

(9) Be within a designated conservation priority area; or

(10) Be designated as a cropped wetland and appropriate associated acreage, as determined by the Deputy Administrator; or

(11) Be cropland which, as determined by the Deputy Administrator, is associated with noncropped wetlands and would provide significant environmental benefits; or

(c) Notwithstanding paragraphs (a) and (b) of this section, land shall be ineligible for enrollment if, as determined by the Deputy Administrator, land is:

(1) Federally owned land unless the applicant has a lease for the contract period;

(2) Land on which the use of the land is restricted through deed or other restriction prior to enrollment in CRP prohibiting the production of agricultural commodities except for eligible land under paragraph (a)(2) of this section; or

(3) Land already enrolled in the CRP unless the scheduled expiration date of the current contract is to occur before the available effective date of a new CRP contract, as determined by the Deputy Administrator.

§ 1410.7 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this part shall be for a term of 10 years.

(b) In the case of land devoted to riparian buffers, filter strips, restoration of wetlands, hardwood trees, shelterbelts, windbreaks, wildlife corridors, or other practices deemed appropriate by CCC under the original terms of a contract subject to this part or for land devoted to eligible practices under a contract modified under § 1410.10, the participant may specify the duration of the contract provided that such contracts must be at least 10 years and no more than a total of 15 years in length.

(c) All contracts shall expire on September 30 of the appropriate year.

§ 1410.8 Conservation priority areas.

(a) CCC may designate National conservation priority areas according to paragraph (c) of this section.

(b) State FSA committees, in consultation with NRCS and State Technical Committees, may submit a recommendation to the Deputy Administrator within guidelines established by the Deputy Administrator for designation of conservation priority areas. Such recommendations should contain clearly defined conservation and environmental objectives and analysis of how CRP can cost-effectively address such objectives. The purpose of the conservation priority area designation is to enhance the CRP by better addressing conservation and environmental issues in a planned and

coordinated manner within a State. Generally, the total acreage of conservation priority areas, in aggregate, shall not total more than 10 percent of the cropland in a State unless there are identified and documented extraordinary environmental needs, as determined by Deputy Administrator.

(c) A region shall be eligible for designation as a priority area only if the region has actual significant adverse water quality or wildlife habitat impacts related to activities of agricultural production or if the designation helps agricultural producers to comply with Federal and State environmental laws.

(d) Conservation priority area designations shall expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Deputy Administrator.

(e) In those areas designated as conservation priority areas, under this section, special emphasis will be placed on identified environmental concerns. These concerns may include water quality, such as assisting agricultural producers to comply with nonpoint source pollution requirements, air quality, or wildlife habitat (especially for currently listed threatened and endangered species or to prevent other species from becoming threatened and endangered), as determined by the Deputy Administrator.

§ 1410.9 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.10;

(2) Agricultural commodities are planted in accordance with a prior, site-specific and NRCS approved conservation plan in close proximity to such hardwood trees; and

(3) The owner and operator of such land agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and, in the case of any contract modified to change from another cover crop, the total annual rental payments over the term of any such contract may not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage

of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to the FOTG and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.10 Conversion to trees.

An owner or operator who has entered into a contract prior to November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which is devoted to permanent vegetative cover, from such cover to hardwood trees (including alley cropping and riparian buffers limited to hardwood trees where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract in accordance with the provisions of § 1410.7(b).

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must agree to maintain such plantings for a time period established by the Deputy Administrator.

(c) CCC shall, as it determines appropriate, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section, except that the total cost-share paid with respect to such contract, including cost-share assistance paid when the original cover was established, may not exceed the amount by which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program (16 U.S.C. 2103a).

§ 1410.11 Restoration of wetlands.

(a) An owner or operator who entered into a CRP contract on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, subject to any restrictions as may be imposed by law, apply to transfer such eligible acres subject to such contract that are devoted to an approved cover from the CRP to the WRP. Transferred acreage shall be terminated from the CRP effective the

day a WRP easement is filed.

Participants will receive a prorated CRP annual payment for that part of the year the acreage was enrolled in the CRP according to § 1410.42. Refunds of cost-share payments or any applicable incentive payments need not be required unless specified by the Deputy Administrator.

(b) An owner or operator who has enrolled acreage in the CRP may, as determined and approved by CCC, restore suitable acres to wetlands with cost-share assistance provided that Federal cost-share assistance has not been previously provided specifically for wetland restoration on the proposed restoration site. In addition to the cost-share limitation in § 1410.41 of this part, an additional one time financial incentive may be provided to encourage restoration of the hydrology of the site.

§ 1410.12—§ 1410.19 [Reserved]

§ 1410.20 Obligations of participant.

(a) All participants subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan, which is part of such contract, in accordance with the schedule of dates included in such conservation plan unless the Deputy Administrator determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control and CCC agrees to a modified plan;

(3) Establish temporary vegetative cover when required by the conservation plan or, as determined by the Deputy Administrator, if the permanent vegetative cover cannot be timely established;

(4)(i) A reduction in the aggregate total quotas and acreage allotments for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Quotas and acreage allotments reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, in accordance with the provisions of § 1410.34, an extension of such protection; and

(ii) reduce production flexibility contract acres enrolled under part 1412 of this chapter or CRP acres enrolled under this part so that the total of such acres does not exceed the total cropland on the farm;

(5) Not produce an agricultural commodity on highly erodible land, in

a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after November 28, 1990, unless such land, as determined by CCC, has a history in the most recent five-year period of producing an agricultural commodity other than forage crops;

(6) Comply with all requirements of part 12 of this title;

(7) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time approved in accordance with instructions issued by the Deputy Administrator;

(8) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(9) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(10) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved cover is adequately protected and to provide such maintenance as necessary, or may be specified in the CRP conservation plan, to avoid an adverse impact on surrounding land, taking into consideration water quality, wildlife, and other needs, as determined by the Deputy Administrator; and

(11) Be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other contract participants for compliance with such contract and the provisions of this part and for any refunds or payment adjustments which may be required for violations of any of the terms and conditions of the CRP contract and provisions of this part.

§ 1410.21 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this part;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract;

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit grazing on CRP land to the extent determined appropriate by the Deputy Administrator where the grazing is incidental to the gleaning of crop residues on fields where the contracted land is located. Such incidental gleaning shall be limited to the 7-month period in which grazing of conservation use acreage was previously allowed, as determined by CCC, in a State under the provisions of the Agricultural Act of 1949, as amended, or after the producer harvests the grain crop of the surrounding field. Further, CCC may provide approval of the incidental grazing of the CRP, but only in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

(e) Provide approval of normal forestry maintenance such as pruning, thinning, and timber stand improvement on lands converted to forestry use only in accordance with a conservation plan in exchange for an applicable reduction in the annual rental payment as determined appropriate by the Deputy Administrator.

§ 1410.22 Conservation plan.

(a) The applicant shall develop and submit a conservation plan which is acceptable to NRCS and is approved by the conservation district for the land to be entered in the CRP. If the conservation district declines to review the conservation plan, such approval by the conservation district may be waived.

(b) The practices included in the conservation plan and agreed to by the participant must cost-effectively reduce erosion necessary to maintain the productive capability of the soil, improve water quality, protect wildlife or wetlands, protect a public well head, or achieve other environmental benefits as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) If applicable, the conservation plan shall address the goals included in the conservation priority designation authorized under § 1410.8 of this part.

(e) All conservation plans and revisions of such plans shall be subject to the approval of CCC and NRCS.

§ 1410.23 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all standards needed to cost-effectively:

(1) Establish permanent vegetative or water cover, including introduced or native species of grasses and legumes, forest trees, and permanent wildlife habitat;

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is eligible cover for purposes of paragraph (a) of this section only if approved by the Deputy Administrator for purposes such as the enhancement of wildlife or the improvement of water quality. Such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising for commercial purposes.

§ 1410.24–§ 1410.29 [Reserved]**§ 1410.30 Signup.**

Offers for contracts shall be submitted only during signup periods as announced periodically by the Deputy Administrator, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.31 Acceptability of offers.

(a) Except as provided in paragraph (c) of this section, producers may submit bids for the amounts they are willing to accept as rental payments to enroll their acreage in the CRP. The bids shall, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits relative to cost are generated, provided the bid is not in excess of the maximum acceptable payment rate established for the for the area offered by or for the Deputy Administrator.

(b) In evaluating contract offers, different factors, as determined by CCC, may be considered from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

- (1) Soil erosion;
- (2) Water quality (both surface and ground water);
- (3) Wildlife benefits;
- (4) Conservation priority area designations;
- (5) Soil productivity;
- (6) Conservation compliance considerations;
- (7) Likelihood that enrolled land will remain in conserving uses beyond the

contract period, which may be indicated by, for example, tree planting, permanent wildlife habitat, or commitments by a participant to a State or other entity to extend the conservation plan;

(8) Air quality; and

(9) Cost of enrolling acreage in the program.

(c) Acreage determined eligible for continuous signup, as provided in § 1410.30, shall be automatically accepted in the program if the:

(1) Land is eligible in accordance with the applicable provisions of § 1410.6, as determined by the Deputy Administrator;

(2) Applicant is eligible in accordance with the provisions of § 1410.5; and

(3) Applicant accepts either the maximum payment rate CCC is willing to offer to enroll the acreage in the program or a lesser rate.

§ 1410.32 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the applicant must submit an offer to participate as provided in § 1410.30;

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC. The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable as determined by the Deputy Administrator. CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC and the program.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator is authorized to approve CRP contracts on behalf of CCC.

(f) CRP contracts may be terminated by CCC before the full term of the contract has expired if:

(1) The owner loses control of or transfers all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the

contract and obtains the approval of CCC according to terms and conditions as determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) Acreage is enrolled in another State, Federal or local conservation program;

(5) The CRP practice fails after a certain time period, as determined by the Deputy Administrator, and the county committee determines the cost of restoring the practice outweighs the benefits received from the restoration;

(6) The CRP contract was approved based on erroneous eligibility determinations; or

(7) It is determined by CCC that such a release is needed in the public interest.

(g)(1) Contracts for land enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years may be unilaterally terminated by all CRP participants on a contract except for contract acreage:

(i) Located within a width determined appropriate by the applicable FOTG of a perennial stream or other permanent waterbody to reduce pollution and to protect surface and subsurface water quality;

(ii) On which a CRP easement is filed;

(iii) That is considered to be a wetland by NRCS;

(iv) Located within a wellhead protection area;

(v) That is subject to frequent flooding, as determined by the Deputy Administrator;

(vi) That may be required to serve as a wetland buffer according to the FOTG to protect the functions and values of a wetland; or

(vii) On which there exist one or more of the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the conservation plan:

(A) Grass waterways;

(B) Filter strips;

(C) Shallow water areas for wildlife;

(D) Bottom land timber established on wetlands;

(E) Field windbreaks; and

(F) Shelterbelts.

(2) With respect to terminations under this paragraph:

(i) Any land for which an early termination is sought must have an EI of 15 or less;

(ii) The termination shall become effective 60 days from the date the participant submits notification to CCC of the participant's desire to terminate the contract;

(iii) Acreage terminated under this provision is eligible to be re-offered for

CRP during future signup periods, provided that the acreage otherwise meets the current eligibility criteria; and

(iv) Participants shall be required to meet conservation compliance requirements of part 12 of this title to the extent applicable to other land.

(h) Except as allowed and approved by CCC where the new owner of land enrolled in CRP is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, the participant in a contract that has been terminated must refund all or part of the payments made with respect to the contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in the contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair the purposes of the program. Further, a refund of an annual rental and cost-share payment need not be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States, as determined by CCC.

§ 1410.33 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity under extraordinary circumstances during a crop year on all or part of the land subject to the CRP contract as determined by the Deputy Administrator;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

(c) Offers to extend contracts may be made available to the extent otherwise allowed by law.

(d) CCC may terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

§ 1410.34 Extended program protection.

(a) In the final year of the contract, participants may, subject to the terms and conditions announced by CCC request to extend the preservation of quota and acreage allotment history for 5 years (and, if announced by CCC, in successive 5-year increments). Such approval may be given by CCC only if the participant agrees to continue for that period, but without payment, to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost-share, annual rental, or other payment shall be made.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as established by the State committee. In the event of a natural disaster, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate, retroactively, prospectively, or both, the amount of quota, and acreage allotment history otherwise preserved under the extended contract.

§ 1410.35–§ 1410.39 [Reserved]

§ 1410.40 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this part, cost-share payments may be made under the CRP only for the cost-effective establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, or for which such owner or operator has received cost-share assistance from any Federal agency.

(d) Except as provided for under § 1410.10(c), cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, only if:

(1) Replacement or restoration of the practice is needed to achieve adequate

erosion control, enhanced water quality, wildlife habitat, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the cover crop on land subject to such contract.

§ 1410.41 Levels and rates for cost-share payments.

(a) As determined by the Deputy Administrator, CCC shall not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan, except that CCC may allow cost-share payments for maintenance costs to the extent required by § 1410.40 and CCC may determine the period and amount of such cost-share payments.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by the Deputy Administrator.

(c) A one-time financial incentive, may be offered to participants who restore the hydrology of eligible wetlands in accordance with the provisions of § 1410.11(b) or other lands as determined by the Deputy Administrator; such incentives will not be greater than 25 percent of the cost of restoring such wetlands or other lands, as determined by CCC.

(d) Except as otherwise provided, a participant may, in addition to any payment under this part, receive cost-share assistance, rental payments, or tax benefits from a State, subdivision of such State, or a private organization in return for enrolling lands in CRP. However, as provided under § 1410.40(f) of this part, a participant may not receive or retain CRP cost-share assistance if other Federal cost-share assistance is provided for such acreage, as determined by the Deputy Administrator. Further, under no circumstances may the cost-share payments received under this part, or

otherwise, exceed the cost of the practice, as determined by CCC.

§ 1410.42 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed \$50,000. The regulations set forth at part 1400 of this chapter shall be applicable in making eligibility and "person" determinations as they apply to payment limitations under this part.

(d) In the case of a contract succession, annual rental payments shall be divided between the predecessor and the successor participants as agreed to among the participants and approved by CCC. If there is no agreement among the participants, annual rental payments shall be divided in such manner deemed appropriate by the Deputy Administrator and such distribution may be based on the actual days of ownership of the property.

(e) CCC shall, when appropriate, prepare a schedule for each county that shows the maximum soil rental rate CCC may pay which may be supplemented to reflect special contract requirements. As determined by the Deputy Administrator, such schedule will be calculated based on the relative productivity of soils within the county using NRCS data and local FSA average cash rental estimates. The schedule will be posted in the local FSA office. As determined by the Deputy Administrator, the schedule shall indicate, when appropriate, that:

(1) Contracts offered by producers who request rental payments greater than the schedule for their soil(s) will be rejected;

(2) Offers of contracts that are expected to provide especially high environmental benefits, as determined by the Deputy Administrator, may be accepted without further evaluation when the requested rental rate is less than or equal to the corresponding soil schedule; and

(3) Otherwise qualifying offers shall be ranked competitively based on factors established under § 1410.31 of this part in order to provide the most cost-effective environmental benefits, as determined by the Deputy Administrator.

(f) Additional financial incentives may be provided to producers offering contracts expected to provide especially high environmental benefits through an increased annual rental payment or incentive payment as determined by the Deputy Administrator.

§ 1410.43 Method of payment.

Except as provided in § 1410.50, payments made by CCC under this part may be made in cash or other methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

§ 1410.44–§ 1410.49 [Reserved]

§ 1410.50 State enhancement program.

(a) For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payments per year that a person may receive under this part shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such enhancement programs carried out by such State, political subdivision, or agency thereof which has been approved for that purpose by CCC.

(b) CCC may enter into other agreements in accordance with terms deemed appropriate by CCC, with States to use the CRP to cost-effectively further specific conservation and environmental objectives of that State and the nation.

§ 1410.51 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, as determined by the Deputy Administrator, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant.

(3) If the new owner or operator becomes a successor to a CRP contract with CCC, then, except as otherwise determined appropriate by the Deputy Administrator:

(i) Cost-share payments shall be made to the participant, past or present, who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.42.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage;

(2) Shall comply with the provisions of § 1410.32(h); and

(3) Refund all previous payments received under the contract by the participant or prior participants, plus interest, except as otherwise specified by the Deputy Administrator.

(c) Federal agencies acquiring property, by foreclosure or otherwise, that contains CRP contract acreage cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.52 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this paragraph:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(c) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the

accomplishment of the goals of the program.

§ 1410.53 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail.

§ 1410.54 Performance based upon advice or action of the Department.

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.55 Access to land under contract.

(a) Any representative of the Department, or designee thereof, shall be provided by the applicant or participant as the case may be, with access to land which is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the CRP contract.

§ 1410.56 Division of program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall ensure that producers who would have an interest in acreage being offered receive treatment which CCC deems to be equitable, as determined by the Deputy Administrator. CCC may refuse to enter into a contract when there is a disagreement among persons seeking enrollment as to a person's eligibility to participate in the contract as a tenant and there is insufficient evidence to indicate whether the person seeking participation as a tenant does or does not have an interest in the acreage offered for enrollment in the CRP.

(b) CCC may remove an operator or tenant from a CRP contract when the operator or tenant:

(1) Requests, in writing to be removed from the CRP contract;

(2) Files for bankruptcy and the trustee or debtor in possession fails to affirm the contract, to the extent

permitted by the provisions of applicable bankruptcy laws;

(3) Dies during the contract period and the Administrator of the estate fails to succeed to the contract within a period of time determined by the Deputy Administrator; or

(4) Is the subject of an order of a court of competent jurisdiction requiring the removal from the CRP contract of the operator or tenant and such order is received by FSA, as determined by the Deputy Administrator.

(c) In addition to the provisions in paragraph (b) of this section, tenants shall maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC shall assume the tenancy is being maintained unless notified otherwise by a CRP participant specified in the applicable contract.

§ 1410.57 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1410.58 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter.

§ 1410.59 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant or person seeking participation may appeal or request reconsideration of an adverse determination rendered with regard to such participation in accordance with the administrative appeal regulations at parts 11 and 780 of this title.

(b) Determinations by NRCS concerning land classification, erosion rates, water quality ratings or other technical determinations may be appealed in accordance with procedures established under part 614 of this title or otherwise established by NRCS.

§ 1410.60 Scheme or device.

(a) If it is determined by CCC that a person has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such person during the applicable period may be required to be refunded with interest

thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or annual rental payments, or obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future, or conditional interest, reversionary interest, or any option, future or present, with respect to such land, and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. Failure to fully disclose such interest shall be considered a scheme or device under this section.

§ 1410.61 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the program year in which the false information or claim was filed and the contract may be terminated in which case a full refund of all prior payments may be demanded. False information or false claims include, but are not limited to, claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld. The remedies provided for in this section shall be in addition to any and all other remedies, criminal and/or civil that may apply.

§ 1410.62 Miscellaneous.

(a) Except as otherwise provided in this part, in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(b) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made

under this part may be withheld to the extent provided for in part 12 of this title.

(c) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law; provided further the Deputy Administrator may add to the contract such additional terms as needed to enforce these regulations which shall be binding on the parties and may be enforced to the same degree as provisions of these regulations.

(d) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of CRP acreage due to foreclosure and the new owner chooses not to continue the contract in accordance with § 1410.51, refunds shall not be required from any participant on the contract to the extent that the Deputy Administrator determines that forgiving such repayment is appropriate in order to provide fair and equitable treatment.

(e) Crop insurance purchase requirements in part 1405 of this chapter apply to contracts executed in accordance with this part.

(f) Land enrolled in CRP shall be classified as cropland for the time period enrolled in CRP and, after the time period of enrollment, may be removed from such classification upon a determination by the county committee that such land no longer meets the conditions identified in part 718 of this title.

(g) Research projects may be submitted by the State committee and authorized by the Deputy Administrator to further the purposes of CRP. The research projects must include objectives that are consistent with this part, provide economic and environmental information not adversely affect local agricultural markets, and be conducted and monitored by a bona fide research entity.

(h) CCC may enter into other agreements, as approved by the Deputy Administrator, to use the CRP to meet

authorized wetland mitigation banking pilot projects.

§ 1410.63 Permissive uses.

Unless otherwise specified by the Deputy Administrator, no crops of any kind may be planted or harvested from designated CRP acreage during the contract period.

§ 1410.64 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under provisions 44 U.S.C. Chapter 35 and OMB number 0560-0125 has been assigned.

Signed at Washington, DC, on February 11, 1997.

Grant Buntrock,

*Administrator, Farm Service Agency, and
Executive Vice President, Commodity Credit
Corporation.*

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Wednesday
February 19, 1997

Part IV

**Department of
Transportation**

**Research and Special Programs
Administration**

49 CFR Part 171

**Hazardous Materials: Cargo Tank Motor
Vehicles in Liquefied Compressed Gas
Service; Interim Final Rule**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 171****[Docket No. RSPA-97-2133 (HM-225)]****RIN 2137-AC97****Hazardous Materials: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service; Interim Final Rule****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Emergency Interim final rule and announcement of a public meeting.

SUMMARY: In this interim final rule, RSPA is amending the Hazardous Materials Regulations (HMR) to specify the conditions under which certain cargo tank motor vehicles may continue to be used on an interim basis, even if they are equipped with emergency discharge control systems which may not function as required by the regulations under all operating conditions. This rule addresses specification MC 330, MC 331, and certain non-specification cargo tank motor vehicles which are used to deliver propane and other liquefied compressed gases. It responds to a recently discovered safety deficiency which may affect many of these cargo tank motor vehicles. The intended effect of this action is to ensure, on an interim basis, an acceptable level of safety for delivery of liquefied compressed gases while a permanent solution to the problem is developed and implemented.

During the term of this interim rule, RSPA is seeking comments and data on the costs and effectiveness of alternative means of achieving a level of safety for the long term comparable to that provided by its long-standing regulation. At the same time, the Agency is also seeking comments on the costs and benefits of the interim measures adopted in this rule.

A public meeting is scheduled for March 20, 1997, to receive comments and recommendations in regard to the measures adopted in this interim final rule and to solicit recommendations for a permanent solution. Additionally, two workshops have been scheduled for March 4-5, 1997 and April 8-9, 1997. All interested persons, including trade organizations, cargo tank producers, individual wholesale and retail entities involved in the distribution of liquefied compressed gases and representatives of public protection organizations, are encouraged to participate.

DATES: Effective date: This interim final rule is effective February 19, 1997 through August 15, 1997.

Comment date: Comments must be received by April 21, 1997.

Public meeting: A public meeting will be held on Wednesday, March 20, 1997, from 9:00 a.m. to 5:00 p.m. in Washington, D.C.

Workshops: Workshops will be held on—March 4-5, 1997, and April 8-9, 1997, 9:00 a.m. to 5:00 p.m. in Washington, D.C.

Oral presentations: Any person wishing to present an oral statement at the public meeting should notify Jennifer Karim by telephone or in writing, on or before March 12, 1997.

ADDRESSES: Written comments: Address comments to the Dockets Office, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW, Washington, D.C. 20590-0001. Comments should identify the docket number and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Office is located on the Plaza Level of the Nassif Building at the Department of Transportation at the above address. Public dockets may be reviewed there between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Public meeting: The public meeting will be held at the Federal Aviation Administration (FAA) Auditorium, 800 Independence Avenue, SW, Washington, D.C. 20591.

Workshops: (1) March 4-5, 1997, U.S. Department of Transportation (Room 6244, Nassif Building), 400 Seventh Street, SW, Washington, D.C. 20590; (2) April 8-9, 1997, U.S. Department of Transportation (Room 6200, Nassif Building), 400 Seventh Street, SW, Washington, D.C. 20590.

Oral presentations: Submit written text of oral statement to Jennifer Karim, U.S. Department of Transportation, Room 8100, 400 Seventh Street, S.W., Washington, D.C. 20590. Five copies of written text of oral statements should be presented to RSPA staff immediately prior to the oral presentation.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, Office of Hazardous Materials Technology, Research and Special Programs Administration, telephone (202) 366-4545, or Stephen Keppler, Office of Motor Carrier Safety and Technology, Safety and Hazardous Materials Division, Federal Highway Administration, telephone (202) 366-2978, U.S. Department of Transportation, 400 Seventh Street, SW, telephones 20590-0001.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 8, 1996, more than 35,000 gallons of propane were released during a delivery at a bulk storage facility in Sanford, North Carolina. During the unloading of a specification MC 331 cargo tank motor vehicle into two 30,000-gallon storage tanks, the discharge hose from the cargo tank separated at its hose coupling at the storage tank inlet connection. Most of the cargo tank's 9,800 gallons and more than 30,000 gallons from the storage tanks were released during this incident. If this large quantity of propane had reached an ignition source, 125 people (workers, residents and emergency responders) could have been killed.

The hazards associated with transportation of liquefied petroleum gas have been demonstrated repeatedly on U.S. highways. In fact, propane releases are the second leading cause of death in hazardous materials transportation. Between 1990 and 1991, five reported deaths and 695 injuries resulted from propane incidents in highway transportation. For example, when liquid propane is released into the atmosphere, it quickly vaporizes into its normal non-pressurized gaseous form. This happens very rapidly, and in the process, the propane combines readily with air to form fuel-air mixtures which are ignitable over a range of 2.2 to 9.5 percent by volume. If an ignition source is present in the vicinity of such highly flammable mixtures, the vapor cloud ignites and burns very rapidly (characterized by some experts as "explosively"). This has occurred a number of times over the years, and even though the incidents described below were not caused by spills during lading transfer, they illustrate the grave consequences of a large propane release when ignition occurs:

- On July 25, 1962 in Berlin, NY, an MC 330 bulk transport ruptured releasing about 6,900 gallons of liquid propane. Ignition occurred. Ten persons were killed, and 17 others were injured. Property damage included total destruction of 18 buildings and 11 vehicles.

- On March 9, 1972 near Lynchburg, VA, an MC 331 bulk transport overturned and slid into a rock embankment. The impact ruptured the tank's shell releasing about 4,000 gallons of liquid propane. Ignition occurred. Two persons were killed and five others were injured. Property damage included a farmhouse, outbuildings and about 12 acres of woodland.

- On April 29, 1975, near Eagle Pass, Texas, an MC-330 bulk transport struck a concrete headwall and ruptured releasing more than 8,000 gallons of liquefied petroleum gas. The ensuing fire and explosion killed 16 persons, injured 51, and destroyed 51 vehicles.

- On February 22, 1973, 23 tank cars derailed in Waverly, Tennessee. During wreck-clearing operations, a 30,000-gallon tank car containing liquefied petroleum gas ruptured. The ensuing fire and explosion killed 16 persons, injured 43, and caused \$1.8 million in property damage.

- On December 23, 1988, in Memphis, Tennessee, an MC-330 bulk transport struck a bridge abutment and ruptured releasing 9388 gallons of liquefied petroleum gas. The ensuing fire and explosion killed eight persons and injured eight.

- On July 27, 1994, in White Plains, New York, an MC-331 bulk transport struck a column of an overpass and ruptured, releasing 9,200 gallons of propane. Ignition occurred. The driver was killed, 23 people were injured, and an area within a radius of approximately 400 feet was engulfed in fire.

In the Sanford incident, the driver became aware of the system failure when the hose began to violently oscillate while releasing liquid propane. He immediately shut down the engine, stopping the discharge pump, but he could not access the remote closure control to close the internal stop valve. The excess flow feature of the emergency discharge control system did not function, and propane continued to be released from the system. Additionally, the back flow check valve on the storage tank system did not function and propane was released from the storage tanks. In light of the large quantity of propane released, this incident could have resulted in a catastrophic loss of life and extensive property damage if the gas had reached an ignition source. Fortunately, there was no fire.

Based on the preliminary information from the Sanford incident, RSPA published an advisory notice in the Federal Register on December 13, 1996 (61 FR 65480). This notice alerted persons involved in the design, manufacture, assembly, maintenance or transportation of hazardous materials in MC 330 and MC 331 cargo tank motor vehicles of this problem with the excess flow feature of the emergency discharge control systems and reminded them that these tanks and their components must conform to the Hazardous Materials Regulations (49 CFR Parts 171–180; HMR). Since that time, RSPA has received applications for emergency

exemptions from both the National Propane Gas Association (NPGA) and the Mississippi Tank Company that indicate the problem is more extensive than originally believed. Additionally, The Fertilizer Institute (TFI) and National Tank Truck Carriers, Inc. (NTTC) have submitted applications to become party to these exemptions. In support of its exemption application the Mississippi Tank Company, a manufacturer of specification MC 331 cargo tank motor vehicles, has provided preliminary information that there is reason to suspect the problem may be common to nearly all cargo tank motor vehicles used in liquefied compressed gas service within the United States. This problem may exist also in the non-specification cargo tanks authorized in § 173.315(k). Both applications for exemption are reprinted in their entirety and discussed in detail below.

II. National Propane Gas Association Application for Emergency Exemption

The body of NPGA's application for exemption is reproduced as follows (numbers in brackets have been added for ease of reference in the following discussion):

[1] The National Propane Gas Association (NPGA), acting as an agent for its members, presents here an application for a DOT Exemption to the Hazardous Materials Regulations (HMR) to permit the continued operation of certain cargo tank motor vehicles in propane service pending development and installation of equipment intended to overcome an operational difficulty identified recently. The Association also requests that this application be handled as an emergency exemption under the procedures outlined in 49 CFR 107.113. Upon issuance of this emergency exemption, NPGA will submit a second request to convert the emergency exemption to a conventional exemption.

[2] NPGA is the national trade association of the LP-gas (principally propane) industry with a membership of about 3,500 companies, including 37 affiliated state and regional associations, representing members in all 50 states. Although the single largest group of NPGA members are retail marketers of propane gas, the membership also includes propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. Propane gas is used in over 18 million installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks.

[3] On September 8, 1996, a cargo tank motor vehicle, of the type in the industry known as a highway transport—a large cargo tank semi-trailer pulled by a highway truck tractor—was unloading a cargo of propane into permanent storage tanks at a propane

marketing facility in Sanford, North Carolina. Shortly after the transfer operation began, the transfer hose separated from the transfer connection at its juncture with the plant piping and began discharging liquid propane to the atmosphere. The vehicle driver heard sounds unusual for a transfer operation and shut off the vehicle engine. According to the report of the Federal Highway Administration inspector, the driver was not able to get to the remote controls to close the internal stop flow valve. The driver then ran to an adjacent residential area to warn residents to immediately evacuate the area. As will be discussed later in this letter, the excess flow protection in the cargo tank did not activate and the entire propane cargo was discharged to the atmosphere.

[4] Likewise, emergency flow protection in the plant piping did not activate automatically as designed and intended. As a result, the entire contents of the storage facility—something in excess of 35,000 gallons of propane—was also discharged to the atmosphere. While the emergency flow control system on the transport is subject to the HMR, the storage tank system is subject to regulations of the State of North Carolina. Investigation of that segment of the incident is being handled as a separate matter. The purpose of this letter is to discuss the transport system, applicable regulations and what can be done to prevent such an incident from recurring.

[5] Mr. Samuel E. McTier, NPGA President, has appointed a special task force to work directly under the NPGA Executive Committee to determine the extent and nature of the underlying causes of this incident. The task force was directed to study this incident and develop two plans of action: First, how to provide for continued safe operation of existing propane cargo tanks while necessary changes are developed and put into place [including those cargo tanks to be built during this transition period], and second, how to correct safety and operational problems for the long term through changes to the MC-331 specification, if necessary, and to industry recommended safety and operating practices to preclude such an incident from happening again. This task force first met December 12–13, 1996 in Atlanta, Georgia. The enclosed recommendations and accompanying comments are based on their deliberations.

[6] NPGA understands that Mississippi Tank Company has already submitted an application for an emergency exemption and supports the technical discussions in that application as a succinct presentation of the overall problem. In the time that has passed since that application was filed with DOT, however, additional information has become available. As a consequence, while much of the Mississippi Tank information has been incorporated into this application, there are certain significant differences between the NPGA application and the Mississippi tank document.

[7] It is important to recognize that the situation described in the Mississippi Tank application is not unique to that company. Rather, that situation can reasonably be expected to occur with propane transports from other assemblers.

[8] In the smaller propane cargo tank motor vehicles (typically smaller than 3,500 gallons water capacity, called bobtails), the cargo tank is mounted directly on the vehicle chassis. These vehicles have a somewhat different piping arrangement than that used on transports. Consequently, on preliminary review, bobtails do not appear to have the same operating characteristics as transports. As a result, the first priority of this NPGA special task force has been directed at the transports; once the situation with the transports has been brought under control for the short term, the task force will immediately make similar investigations and studies of the bobtail vehicles.

[9] NPGA is gravely concerned about the underlying causes of the North Carolina incident and is committed to identifying and implementing appropriate changes to industry recommended safety and operating practices and to the HMR requirements to preclude such an incident occurring again.

[10] The propane industry transports between 7 and 10 billion gallons annually in these highway transports; that same volume is transported again in these local delivery bobtail tank trucks. In the past 10 years, there has not been a similar reported incident during the unloading of a transport. According to DOT's information, some 8 or 10 events have occurred unloading bobtails. That incident rate works out to be less than one per year.

[11] The propane industry is committed to prompt correction of any problems or concerns that are identified with DOT by this special task force as part of our continuing desire and goal to continue that safety record. We also believe that the current incident experience record is testimony to the validity and effectiveness of the safety and operating systems presently in use for transportation of propane, both in the Hazardous Materials Regulations and in industry safety and operating practices.

The Difficulty

[12] 49 CFR 178.337-11(a)(1)(i) requires each internal self-closing stop valve and excess flow valve to automatically close if any of its attachments are sheared off or if any attached hose or piping is separated. 49 CFR 178.337-11(a)(1)(v) expands on the requirements for properly sizing excess flow valves regarding branching or other restrictions and the addition of additional smaller capacity excess flow valves, where required.

[13] Mississippi Tank Company recently conducted tests in an effort to determine why the excess flow feature of the internal valve in the transport cargo tank outlet flange in the Sanford, North Carolina incident did not function as intended by the MC-331 specification requirements. The Mississippi Tank tests clearly show that the internal stop flow valves available for use with flange mounted pumps will not always close automatically under conditions simulating the situation where the hoses or piping might be sheared off or separated from the pump. Mississippi Tank has also determined that there are no such internal valves presently available that will provide the protection required by §§ 178.337-11 (a)(1)(i) and (a)(1)(v).

[14] Principal among the conclusions reached from the Mississippi Tank tests is that the internal valve equipped with the 400 gpm spring (which operates the excess flow feature to provide automatic closure) would close dependably with tank pressures as low as 65 psig but that the excess flow feature would not operate at tank pressures lower than 65 psig.

Rather than repeat the discussion of the test results in the Mississippi Tank application, in the interests of brevity, we refer you to that application.

Solutions to the Situation—Long Term

[15] From the Mississippi Tank tests and from discussions with the manufacturers of the cargo tank pumps and the internal valves, NPGA has concluded that the second and third sentences of § 178.337-11(a)(1)(v) are self-conflicting and mutually exclusive. Based on present technology and equipment, it simply is not possible to comply with *both* provisions.

[16] When this provision was reworded in the HM-183 amendments, industry review of the new provisions indicated that there would be no problem in complying with the requirement. The revised wording was accepted at face value merely as a rewording of the provisions that existed at that time in the MC-331 specification prior to the amendments. At the time, all of the vehicle assemblers believed that their individual practices for compliance with the specification requirements were appropriate and adequate to the need. However, the studies and discussions undertaken as a consequence of this North Carolina incident have demonstrated, and have been confirmed by the Mississippi Tank tests, that there is a basic conflict in the provisions contained in these two sentences in § 178.337-11(a)(1)(v).

[17] It is now clear that excess flow protection, whether when incorporated into the discharge internal valve or as an in-line device, will not function under all climatic conditions nor under other low flow rate conditions. In recognition of the preliminary conclusion that excess flow devices will not always operate as intended or desired, the NPGA special task force has concluded that new control and operating systems must be developed to provide the desired level of reliability and emergency flow control during unloading operations. Devising these new systems is the next priority for the special task force appointed by President McTier.

[18] The task force will also review control systems and operating procedures for loading operations to be sure that the desired level of emergency flow control will also be available in that operation as well. The loading operations aspect of this project, has been assigned a second level of priority, since there have not been any reported incidents during those operations.

[19] The special task force already has identified several possible alternatives for emergency flow control during transport unloading for consideration as permanent changes to industry recommended safety and operation practices or for adoption as regulatory provisions. These possible solutions include:

- A pneumatic deadman device interlocked with the internal stop flow valve

and the tank truck brakes, possibly combined with a lanyard for remote activation. Possibly applicable to bobtails as well.

Note: The term "deadman" is used to identify a system that must be in place and operable in order for the unloading system to operate. If the shut-down mechanism of the system is activated for any reason, the unloading operation is discontinued and the internal stop flow valve closes.

- A mechanical deadman device, possibly combined with a lanyard for remote activation. Possibly applicable to bobtails as well.

- A differential valve downstream of the pump. If the engine is shut down, the set-pressure differential is detected and stops the flow of propane. This system would only protect piping downstream of the differential valve. Applicable to bobtails as well.

[20] Amendment of § 173.33 will also be needed to apply this improved level of safety on a permanent basis to the continued operation of existing MC-330 and MC-331 propane tank trucks and the non-specification cargo tanks operated under § 173.315(k).

[21] The special task force will also study provisions for allowance of the physical and chemical properties of the lading in designing the emergency flow protection system required by the MC-331 specification. Such provisions are not presently a directly-mentioned provision in the specification. The preliminary analyses conducted by the special NPGA task force indicate that such considerations are of primary importance. As an example, while NPGA has every confidence in the results of the excess flow valve capacity tests conducted by Mississippi Tank Company, which used water under pneumatic tank pressure as the test medium, we also now know that those tests only approximate the performance of the same equipment when handling propane in a general manner. Sufficient data and other information is not presently available to satisfactorily model the performance of that equipment in water flow to satisfactorily predict the manner in which the same equipment would perform when handling propane, or any other liquefied compressed gas, for that matter.

Solutions to the Situation—Short Term

[22] Responding to the long term need for a new control system is the ultimate goal for the NPGA special task force. Part of that mission includes presentation of appropriate recommendations to DOT for further consideration and adoption as amendments to the MC-331 specification for new construction and to § 173.33 to provide for the continued operation of existing cargo tanks.

[23] However, the immediate problem is how to provide for the continued operation of (1) existing MC-330 and MC-331 cargo tank motor vehicles in propane service, (2) the non-specification vehicles authorized under § 173.315(k) of the HMR, and (3) any new vehicles built in the interim period pending formal amendment of the HMR. Also, provisions must be made in this continued operation aspect for the annual leakage test and external inspection and for

the five-year requalification requirements of the HMR for these vehicles.

[24] As an agent for the members of the Association, NPGA now submits an application for a DOT Exemption. For reasons set forth below, NPGA also recommends that this application be handled under the provisions for emergency exemptions (Ref: § 107.113). Following DOT's approval of such an exemption, NPGA will promptly submit an application to convert that emergency exemption to a conventional exemption. Such a combination of Exemptions would provide two things:

(1) authorization for the continued operation of existing cargo tank motor vehicles in propane service in the interim to the adoption of appropriate regulatory provisions to correct these technical and operational difficulties and (2) for the conditional operation (including annual tests and inspections and the five-year requalification) of any cargo tank motor vehicles built under the present regulations pending adoption of said amendments. Given the exceptional safety record discussed earlier for both transports and bobtails, NPGA believes that the following provisions for the proposed Exemption will continue this safety record while the relevant changes to industry safety and operating practices and any changes to the Hazardous Materials Regulations are developed and put into place.

[25] NPGA is not advocating removal of §§ 178.337–11(a)(1)(i) and (a)(1)(v) at the present time. Rather, we believe that further information is needed as to the nature and extent of changes to be considered for the MC–331 specification before any proposed changes are considered for the Hazardous Materials Regulations.

[26] NPGA recognizes the importance of prompt and expedient action in developing recommended changes to industry safety and operating practices and provisions of the Hazardous Materials Regulations to improve present the respective provisions for emergency flow control. To that end, NPGA will present a time plan with respective completion points for identification, development, testing and implementation of retrofits and the presentation of proposed changes to the Hazardous Materials Regulations to DOT by February 17, 1997. Furthermore, NPGA representatives will be in frequent contact with RSPA/Office of Hazardous Materials Safety and FHWA/Office of Motor Carrier Safety staff in a liaison capacity regarding the deliberation so this NPGA special task force and will present formal quarterly progress reports at appropriate liaison meetings.

[27] *Provisions of the Exemption:*

1. Compliance with applicable provisions of the Hazardous Materials Regulations, with the exception of §§ 173.315(n), 178.337–11(a)(1)(i) and (a)(1)(v).

2. NPGA will contact all of its members operating or assembling propane cargo tank motor vehicles and will work with industry trade press and other resources to reach affected non-member companies. The purpose of this outreach effort will be to bring the North Carolina incident and related, identified concerns to the attention

of companies operating or assembling propane cargo tank motor vehicles.

3. Transfer hose used under the terms of the exemption (1) will be inspected before continued use, with particular attention to the condition and suitability of the hose end couplings for service and (2) otherwise comply with applicable provisions of NFPA 58, 1995 edition. New transfer hose assemblies will be tested as required by § 180.407(h)(1)(ii) before the hose assembly is placed in service.

NFPA 58, 1995 edition designates NFPA 58 *Storage and Handling of Liquefied Petroleum Gases*, published by the National Fire Protection Association, Quincy, Massachusetts. In its capacity as an American National Standard, NFPA 58 has been used as the basis of regulation by virtually all of the 50 states. A copy of the 1995 edition (the current edition) is enclosed for your information and consideration.

4. The vehicle driver will be continually in attendance and control of the loading and unloading operations.

5. Drivers will be advised of the events leading to the December 8, 1996 incident at Sanford, North Carolina and trained against the potential of that incident occurring again. Such training will include the inspection of delivery hose and connections to be used for the transfer operation to determine, among other things, that the hose is suitable for continued service and that the hose-end fittings and related connections to plant piping and tank truck valves are suitable for service. Driver training as required by §§ 172.702 and 172.704 will include recognition of the potential severity of equipment failure or malfunction during product transfer and appropriate actions to be taken should such an event occur. Records of this training will be included in records required by § 172.704(d). During the term of this exemption, a statement signed by the driver acknowledging such training and operating instructions will be filed by the employer in the files required by § 172.704.

6. The proposed exemption would apply to two types of vehicles: (1) The continued operation of those cargo tanks already in service—MC–330 and MC–331 cargo tank motor vehicles in propane service and non-specification propane cargo tanks authorized for continued operation under the provisions of § 173.315(k) and (2) the entrance into service of new or remounted vehicles that will be built or assembled in the interim period to the adoption of formal regulatory provisions providing new approaches to emergency flow control as an alternative to excess flow valves.

7. The proposed Exemption will authorize continued assembler and design certification of new MC–331 cargo tank motor vehicles and required annual inspection and 5-year requalification certifications that the subject vehicle complies with the Hazardous Materials Regulations, with the exception of §§ 173.315(n) and 178.337–11(a)(1)(i) and (a)(1)(v).

Treatment as an Emergency Exemption

[28] In recognition of the provisions of HMR/§ 107.113(a), a copy of this request for Emergency Exemption is being filed

concurrently with the Chief, Hazardous Materials and Safety Division, Office of Safety and Technology, Federal Highway Administration, U.S. Department of Transportation, Washington, D.C. 20590–0001.

[29] The propane industry is in the midst of the winter heating season. Over 80 percent of the 7–9 billion gallons of propane referenced at the beginning of this letter is used as a residential heating fuel in rural locations where natural gas service is not available. Virtually all of these cargo tank motor vehicles—highway transports and bobtails alike—are needed to provide timely and adequate delivery of this heating fuel. In addition to residential heating fuel, the industry also provides heating fuel to dairy barns, chicken and hog brooders, peak shaving for natural gas utilities. In addition, propane is also widely used as an alternative engine fuel.

[30] There is another aspect of the need for expedient action in the approval and implementation of this exemption—financial impact on the propane marketers, propane producers, common carriers, vehicle assemblers and equipment manufacturers.

- *propane marketers*—Unless they are able to deliver fuel, these companies literally will not be able to continue in business. Of our 3,500 member companies, some 3,200 are small, independent businesses operating about 3,400 bulk plants (local retail facilities). There are another 3,400 bulk plants operated by 17 multistate marketer companies. Our members sell over 85% of the propane used as a residential heating fuel. Once the propane has been delivered to a bulk plant by a highway transport, it is transported *again* by bobtail cargo tank vehicles to the ultimate consumer.

- *propane producers*—Propane heating fuel has two sources: a co-product of natural gas production and a by-product of crude petroleum cracking and refining operations.

- *common carriers*—Over 90 percent of the propane used as a heating fuel is transported first by pipeline and then by highway transport to the local propane bulk plant. While some propane marketers have their own fleet of transport tank trucks, many of these companies rely on motor common carriers to deliver their propane supply. While many of these carriers carry other materials as well (hazardous as well as non-hazardous), for many carriers, propane transportation is a very significant part of their business.

- *vehicle assemblers*—For some of the vehicle assemblers, propane cargo tank motor vehicles (especially bobtails) are a very major part of their business. The companies building propane highway transports typically produce semi-trailer cargo tank motor vehicles for the transportation of other hazardous materials as well.

- *equipment manufacturers*—The manufacturers of pumps, valves, hose and the other equipment from which a tank truck is assembled obviously service other industries than just propane; at the same time, supplying the propane industry has become a rather significant part of their business.

[31] The ability to be able to operate propane bobtails and highway transports has

so many impacts and is so pervasive as be almost incalculable from an economic impact viewpoint. On the one hand, we believe the extremely large volume of propane handled annually (9,000,000,000 gallons) by transport and then a second time by the bobtails in local deliveries and the demonstrated safety record over the history of the industry is clear testimony to the commitment of this industry to safety and employee training. On the other hand, we are committed to correction of the provisions of § 178.337-11 regarding emergency flow control to address the problems that have been identified in the subject incident.

[32] The NPGA special task force believes it can identify alternative emergency flow control systems in the very near future. While several systems are already under study, no preferences have been established, nor do we know currently what present or new equipment will be necessary to implement any changes. Also, we want to be reasonably sure that these "new" systems will indeed operate as intended to provide the desired level of safety and operation control under emergency conditions, thus, actual service tests will be conducted before widespread installation is undertaken.

[33] Consequently, there is an extreme and vital need to keep the present cargo tank motor vehicles in service, albeit under closer scrutiny and control than has previously been the case, until these retrofit devices and systems can be developed and placed into operation.

[34] For many years, the propane industry has demonstrated its dedication to safety and compliance with standards and regulations. Issuance of this exemption will in no way reduce the safe transportation of propane. On the contrary, identification of the hazard illustrated by the Sanford, North Carolina incident will prompt utmost caution during the period of the proposed Exemption.

Conclusion

[35] Therefore, NPGA believes that a true emergency exists for handling this Exemption request in an expedited manner and thus pledges that this exemption will be continued in use no longer than absolutely necessary during the retrofit of any propane cargo tanks requiring the authorization for operation, recertification or requalification provided by the Exemption.

III. Mississippi Tank Company Application for Exemption

The body of the Mississippi Tank Company application for exemption is reproduced as follows:

The purpose of this letter is to make application for an emergency exemption of the Hazardous Materials Regulations stated above. We urgently need an expedited response to our request and offer the information required by part 107.3 as follows:

1. CFR 178.337-11(a) requires that each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hose or piping is separated. Paragraph 178.337-11(a)(1)(v) expands on requirements for properly sizing excess flow

valves while considering branching or other restrictions and, the addition of additional smaller capacity excess flow valves, where required.

We learned during recent evaluation and testing of internal self closing stop-valves on cargo tank trailers that the flange mounted internal valves available for use with pumps will not automatically close under conditions simulating the situation where the hoses or piping might be sheared off or separated from the pump. Upon further research and consideration, it has become apparent that there are no internal valves available that will provide protection as required by the above paragraphs.

Some considerations of the complex series of problems that are facing us considering these requirements are listed as follows:

A. The most commonly used internal self-closing stop valve is a Fisher C404-M32-600 flanged internal valve whose 600 at the end of the model number indicates the flow rating of 600 GPM (propane). Testing at our facility under simulated conditions using air pressure and water indicates that this internal valve with this 600 GPM spring will not close with tank pressures up to 125 psig. Other flow rates available (which is determined by the type of internal spring that is furnished in the internal valve) are 340 GPM, 400 GPM, 800 GPM and 1000 GPM. Both the 340 GPM and 400 GPM springs were tested to determine their behavior, with most of the testing performed using the 400 GPM springs.

It was determined that the internal valve with the 400 GPM spring would close dependably with pressures down to 65 psig but not at all at lower pressures. This testing was performed while allowing the pump to "free-wheel", which would allow the pump to pass more product than if it were not allowed to free-wheel. Obviously, a pump shaft held stationary would prevent the pump from allowing as much product to pass, thereby preventing the sufficient flow of product through the pump and discharge piping to trigger the self-closing mechanism of the internal valve.

B. Internal valves (which are excess flow valves when open) have springs with manufacturing tolerances of $-20\%/+10\%$, thereby allowing a broad range of performance in a given flow-rated internal valve. Example: a 400 GPM spring can allow a flow between 320 GPM to 440 GPM.

In order to insure proper operation of a pumping system on cargo tanks, various sources in the industry have indicated that internal valve flow rating have been sized with a minimum flow rating of 1.5 times the discharge capacity of the pump. This would indicate that under the greatest flow conditions that the piping system and pump can offer, the self-closing criteria for the internal valve would have been exceeded by a minimum of 50%.

D. Flow rates through internal valves, and the associated piping, is mostly determined by the internal pressure that exists in the cargo tank. The greater the pressure, the more flow rate you will have through a given piping system and the lower the pressure, the lower flow rate through that same piping system. As an example, a cargo tank that was

in dedicated propane service might have internal valves and excess flow valves that work dependably at pressures of 125 psig or higher in warm temperatures but as the temperature gets colder, for instance 20 °F, a tank pressure of only about 41 psig would be present and it is predictable that the internal valves and excess flow valves would no longer close due to the reduced flow associated with lower pressures in the tank. This problem becomes worse if a tank designed to carry products with vapor pressures approaching 250 psig is hauling low vapor pressure products, such as butanes, whose vapor pressures at warm temperatures are very low and at very cold temperatures can be practically nothing, insuring that the internal valves would not function at these low pressures.

E. It appears obvious that if you size an internal valve to be used with a pump that has a sufficiently low rating to insure that the internal valve would automatically close in the event of the separation of the discharge piping or hoses, the internal valve would never remain open during the pumping operation. After further study, it appears that due to the consistent volumetric displacement of a pump, the internal valve would never close if it were sized to allow the pump to dependably unload a product.

F. Consideration was given to the use of a lesser flow rate excess flow valve at the pump discharge connection, but it was determined after considerable deliberation that an excess flow valve that was sized so as to allow the pump to discharge product dependably might never close in the event the piping or hoses became separated, as the flow rating must be sufficient to allow pumping without causing the internal valve to close. If separation occurred, the pump would still be turning at the same RPMs, thereby producing roughly the same amount of flow rate as it was while the piping was still connected. Again it becomes apparent that the downstream excess protection appears not to be a viable solution either.

G. One internal valve manufacturer offers internal valves that open and close using pump differential pressure, but due to the nature of the way the pump must create differential pressure to allow the internal valve to stay open, it has been determined during discussions with the internal valve manufacturer that this internal valve might not close in all conditions as it should.

2. The problem meeting this requirement applies to all compressed gas cargo tanks of the MC331 classification (and possibly the MC338 classification) that utilize internal self-closing stop valves and excess flow valves in conjunction with pumps and in some cases simply in conjunction with discharge piping. This problem is not specific to any one class of product and would include all products that require the use of these type cargo tanks.

3. Using the internal valves presently available, our company has been producing between 40-200 cargo tanks a year for more than 35 years. Our company has no knowledge of any problems or safety related issues resulting from the use of these valves. Although all the cargo tanks in operation today apparently do not comply with the

above requirements, the compressed gas industry does not appear to have a record of major problems in this area.

If an emergency exemption were granted to allow the continued use and certification of these cargo tanks, a warning statement and/or special operating instructions could be a new requirement as part of the conditions allowing for the exemption. This would provide for increased safety compared to what is presently available.

4. We feel that a special exemption is required for duration of 18–24 months minimum to allow all of the assemblers, equipment manufacturers and owners to help work out a solution to this problem. Equipment manufacturers advise that it takes a minimum of 12–15 months to design, test and make available new designs of valving. If it is determined that this will be part of the solution, the addition of “dead-man” type devices that cause the internal valves to close when the operator is not present may be incorporated as part of the solution as well.

We urgently request that you act upon our application for an emergency exemption for the reasons explained above. This exemption is needed to allow the continued use of existing equipment and to allow badly needed new equipment to continue to be made available to the industry.

Your expedited response on a priority basis is appreciated in advance.

IV. RSPA’S and FHWA’s Review

From the four emergency exemption applications, discussion with the applicants, information developed from the Federal Highway Administration (FHWA) investigation of the Sanford incident, the regulatory history related to these issues and knowledge of the liquefied compressed gas industry, RSPA and FHWA have developed the following information and opinions related to the situation associated with the failure of the excess flow feature with the emergency discharge control system on cargo tanks used to transport liquefied compressed gases.

Emergency discharge control systems on cargo tanks used to transport liquefied gases provide two basic safety features. First, an excess flow feature is designed to automatically stop the flow of gas when piping, fittings or hoses rupture or separate. The second feature is a remotely controlled internal self-closing stop valve designed to stop the flow of product from a cargo tank. Cargo tanks having capacities over 3500 gallons must have remote means of automatic closure, both mechanical and thermal, of the internal self-closing stop valve; the remote operators must be installed at the ends of the tank in at least two, diagonally opposite locations. Cargo tanks of 3500 gallons capacity or less must have at least one remote means of closure, which may be mechanical, installed on the end of the cargo tank farther away from the

loading/unloading connection area. The HMR require the excess flow feature to function in the event of a complete failure (separation) of any attached hoses or piping. The HMR do not require the excess flow feature to function in response to leaks or partial failure of a pipe, fitting or hose. Manual activation of the self-closing valve is the primary safety feature for pipe, fitting or hose failures during product transfer. RSPA does not agree with the NPGA statement (paragraph 15) that the second and third sentences of § 178.337–11(a)(1)(v) are “self-conflicting and mutually exclusive.”

When the equipment and regulations for excess flow features on cargo tanks transporting liquefied gases were first developed, cargo tank motor vehicles were unloaded using internal pressure, by pressurizing them, or by use of pumps installed at unloading facilities. With such unloading systems, an excess flow feature properly designed for a cargo tank and the products the tank is designed to transport would reliably function in the event of a total pipe, fitting, or hose failure. Over time, in response to customer demand, most cargo tank motor vehicles delivering liquefied gases to customer bulk storage facilities have been equipped with pumps to speed product transfer. The tests performed by Mississippi Tank Company following the Sanford incident demonstrated that a pump in the discharge system functions as a product flow regulator that restricts excess flow, thereby preventing functioning of the excess flow feature. Thus, excess flow valves or features will not function when pumps are used in a cargo tank’s discharge system. NPGA addresses this issue in its discussion on “Solutions to the Situation-Long Term” (paragraphs 15 through 21).

RSPA and FHWA do not agree with the position of the NPGA task force, expressed in paragraph 8, that transport vehicles should be given first priority in addressing this situation. While the capacity of bobtail cargo tanks is lower than that of transports, far more bobaills are in use and many more local deliveries are made each day than are deliveries to bulk storage facilities. Thus, the risk of an accidental discharge of product is much higher for bobaills than for transports. Because bobtail cargo tank motor vehicles are fitted with pumps and discharge systems very similar to transports, RSPA and FHWA believe that the excess flow features of these smaller vehicles also may not function when a pipe, fitting or hose ruptures or separates. This conclusion is supported by nine instances reported to RSPA over the last ten years of propane

releases involving the failure of the excess flow system on bobaills.

As previously stated, RSPA and FHWA believe that manual activation of the internal self-closing stop valve is the primary means of stopping the flow of product from a cargo tank motor vehicle in the event of pipe, fitting or hose failure during transfer operations. The vehicle operator is the individual responsible for the manual activation of the internal stop valve in the event of pipe, fitting or hose failure. Under the present circumstances, where the excess flow feature of the emergency discharge control system may not function, RSPA and FHWA believe that special operator attendance requirements are necessary to ensure that a qualified person will always be in a position to immediately activate the internal stop valve in the event of a release. In addition to the requirements of § 177.834(i), RSPA and FHWA believe that the operator must have an unobstructed view of the cargo delivery lines, and be within an arm’s reach of a means for closure of the internal self-closing stop valve or other device that will stop the discharge of product from the cargo tank. Until an automatic flow control system is developed, this may require two operator attendants on a cargo tank motor vehicle or the use of a lanyard, electro-mechanical, or other device or system to remotely stop the flow of product. If a lanyard or other device or system is used, it must meet the performance standard in the regulation (“will immediately stop the discharge of product from the cargo tank”). For example, there must be adequate space for use of, and appropriate tautness in, a lanyard being used to meet this requirement.

A number of other measures can be taken to mitigate the problem experienced in Sanford. Among these are the following:

- Remove pumps and compensate for decreased discharge flow by means of:
 - enlarging piping, fittings and hose downstream of existing internal valves, retaining their excess flow features.
 - increase pressure in the vapor space of the cargo tank, e.g., with a nitrogen pad.
- Relocate pumps to the receiving end of the unloading system.
- Transmit readout from storage tank filling instrumentation back to the cargo tank so that operator/attendant can remain in close proximity to internal valve closure devices.
- Increase frequency and thoroughness of maintenance actions; for example, systems for remote closure

of internal valves demand regular inspection, test and adjustment.

It has been reported that the propane release in the Sanford incident was from the hose used for delivery and that the hose was new and had not been pressure tested prior to attachment. Also, it was reported that the hose coupling on the storage tank end had not been firmly attached to the hose by means of the two machine bolts provided for this type coupling.

On large MC 330/331 transport vehicles, hoses typically are not attached to the cargo tank piping during transit, while on small local delivery cargo tanks, hoses typically remain attached to the piping and are under pressure during transit. Technically, hoses attached to piping and under pressure during transit form part of the cargo tank wall as defined in § 178.320(a)(1). This means that they should be tested in accordance with § 180.407(g) at the test pressure required for MC 330/331 cargo tanks in § 180.407(g)(1)(iv), i.e., at 1.5 times either the maximum allowable working pressure (MAWP) or the re-rated pressure, whichever is applicable. However, because of the difficulties that may be encountered at these high pressures, and due to the potential for over-stressing hose reinforcement fibers during such a test, RSPA and FHWA believe the test should be conducted at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. This pressure test requirement includes couplings or other fittings which are part of the assembled hose as used. It must be repeated after any repair or modification of the assembled hose before it is re-used.

Non-specification cargo tanks. Potential difficulties with excess flow protection are not well defined for the group of non-specification cargo tanks which are authorized for transportation of liquefied petroleum gas by § 173.315(k). These cargo tanks were manufactured before January 1, 1981, in conformance with the editions of the ASME Code and NFPA Standard 58 which were in effect at the time of manufacture. They must conform with applicable laws of the states in which they operate; and they must be tested and inspected periodically in accordance with subpart E of part 180, as specified for MC 331 cargo tank motor vehicles.

RSPA and FHWA recognize that the situation described for MC 330 and 331 cargo tanks is no less severe for these non-specification vessels. RSPA and FHWA encourage responsible authorities in every jurisdiction to give

special attention to NFPA provisions for vapor and liquid withdrawal requirements for internal valves with integral excess-flow valves or excess-flow protection.

V. RSPA's and FHWA's Evaluation of the Applications for Exemption

As a frame of reference for evaluation of the applications for exemption, the specification requirements for emergency discharge control can be achieved by means of either an internal self-closing stop valve or an excess flow valve. The most important performance standard relevant to this issue is that "Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated." [See § 178.337-11(a)(1)(i)]. Provisions of § 178.337-11(a)(1)(v) come into play only if and when excess flow valves are used anywhere in the system.

After evaluating the situation and the NPGA and Mississippi Tank Company emergency exemption applications, RSPA finds that this situation constitutes an emergency with broad applicability to many persons and far reaching safety and economic impacts. RSPA also is not aware of readily available, off-the-shelf equipment that can provide a functioning automatic excess flow feature on cargo tanks without removal of pumps and other restrictions. The applicants propose an outreach effort to inform tank users of the Sanford incident and the safety issues related to product transfer operations and a research and development program to design a system which will provide greater safety in product transfer operations.

During evaluation of the Sanford incident, it has become evident that the level of safety provided by the HMR is not being achieved on equipment currently being produced and certified by manufacturers of these cargo tanks. Specifically, these tanks do not meet the requirement for automatic closure of internal self-closing stop valves and excess flow valves in the event of separation of hoses or piping. The regulatory language is intended to ensure a certain level of safety in these vehicles. However, the level of safety provided by the immediate steps proposed by NPGA is not equivalent to the level of safety provided by § 178.337-11(a)(1)(i). The NPGA proposes requirements regarding driver training, testing and inspection of equipment, and driver attendance during unloading operations (see paragraph 27 of the NPGA application). These proposed requirements are

effectively the same as those already set forth in 49 CFR. In the Mississippi Tank application, it was suggested that "a warning statement and/or special operating instructions" could be required, but no details were offered on how that would achieve a level of safety equivalent to that provided by the existing regulatory requirements in § 178.337-11(a)(1)(i). Thus, neither application proposes procedures that would compensate for the absence of excess flow features that function reliably and in a passive manner.

Because the applications do not provide for an equivalent level of safety, as required by § 107.113(f)(2)(ii), of the HMR, they have been denied by the Associate Administrator for Hazardous Materials Safety. Also, the issues addressed in the applications have significant safety and economic implications for a broad range of persons; consequently, RSPA believes the issues are better addressed through the rulemaking process. Thus, RSPA is issuing this interim final rule.

VI. Provisions of the Interim Final Rule

RSPA is publishing this interim final rule to enhance the safety of product transfer operations as they are currently conducted, in most cases, while allowing the continued delivery of liquefied compressed gases (principally propane, other liquefied petroleum gases and anhydrous ammonia). RSPA and FHWA believe that, without the authorization for continued operation provided by this rule, the public, industry, and cargo tank motor vehicle operators and manufacturers would be severely impacted. The liquefied compressed gases authorized for highway transportation under this rule are used for home heating, support of industrial and agricultural operations, and as fertilizer. Because there are no alternative means for distribution of these materials in most areas served by the cargo tank motor vehicles authorized by this rule, RSPA and FHWA believe this rule is necessary to prevent severe shortages of liquefied compressed gases in the areas where they are consumed.

This emergency interim final rule authorizes, under specific conditions, the continued manufacture, assembly, certification, use and recertification of cargo tanks that may not meet the excess flow feature requirements for cargo tanks authorized for the transportation of liquefied compressed gases. This rule is effective through August 15, 1997. This will allow time for implementation of changes to equipment that will automatically shut down product transfer as required in § 178.337-11,

when a pipe or hose ruptures or separates.

In the next several months, RSPA and FHWA will actively pursue technical improvements to product delivery systems, as well as other feasible operational controls, that may be applied to minimize threats to public safety inherent in the transportation of liquefied compressed gases. RSPA has developed an action plan that includes the two public workshops scheduled for March 4–5, and April 8–9, 1997. In addition, working through its Volpe National Transportation System Center, RSPA will examine the availability and feasibility of systems that can achieve the purpose of the regulations; identify facilities where automatic shut-down systems may be safely tested, and seek out other sources of technical expertise in government, industry and academia.

The August 15, 1997 compliance date was chosen in part because it falls between the end of the summer 1997 planting season and the beginning of the winter 1997–1998 heating season. This date gives industry approximately six months to bring cargo tanks into compliance with the current (i.e., pre-IFR) regulatory requirement. Alternatively, industry may be able to demonstrate that regulatory compliance is not feasible, and recommend timetables for achieving compliance or implementing alternative technology to achieve the safety objective of a passive, automatic shut off system for emergency discharge control.

By the expiration of the interim final rule, RSPA and FHWA could announce their intent to strictly enforce the current regulatory requirement, unless the industry convinces us that they are making a good faith effort to develop a properly operating system that meets the requirements of the HMR. Alternatively, depending on the information developed during the comment period, RSPA would implement rulemaking either to modify the current regulatory requirement, providing a different means of passive shut-off, or extending the provisions of the IFR (with modification, if warranted) based on an industry-developed timetable for implementing technological change. The rule addresses the concerns expressed in the exemption applications of the NPGA, Mississippi Tank Company, TFI, and NTTCC.

In order to enhance the level of safety during transfer operations using current equipment, the rule specifies special conditions for continued operations. The following provisions are adopted in § 171.5 to provide a set of alternative safety controls for the carriage of

liquefied gases in cargo tanks that cannot be demonstrated to conform with existing excess flow feature requirements.

Paragraph (a)(1) specifies use provisions under which MC 330, MC 331 or non-specification cargo tank motor vehicles authorized under § 173.315(k) may be operated and unloaded.

Paragraph (a)(1)(i) prescribes that before transfer from a cargo tank motor vehicle the integrity of components making up the discharge system must be verified. Paragraph (a)(1)(ii) prescribes that prior to using a new or repaired transfer hose or a modified hose assembly, the hose must be pressure tested at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. Paragraph (a)(1)(iii) specifies that a qualified person in attendance of transfer from a cargo tank must have the capability for emergency shut-down. Paragraph (a)(1)(iv) specifies that when there is an unintentional release of lading, the internal self-closing stop valve must be activated and all motive and auxiliary power equipment must be shut down. Paragraph (a)(1)(v) prescribes the development of comprehensive emergency operating procedures for all transfer operations. Paragraph (a)(1)(vi) specifies that each manufacturer, assembler, retester, motor carrier and other hazmat employer must provide training to its hazmat employees so that they can properly perform the new function-specific requirements in this section.

Paragraph (a)(2) prescribes conditions for continued qualification of existing in-service cargo tank motor vehicles.

Paragraph (a)(3) addresses new vehicles, including a special entry on the certification required by § 178.337–18.

Paragraph (b) specifies the marking to be displayed on a cargo tank motor vehicle operating under this section.

Paragraph (c) establishes August 15, 1997, as the expiration date for this temporary regulation.

VII. Request for Comments

To facilitate decisions on the need for this interim final rule as a short term response to an emergency and the potential need for a permanent change in the rule, RSPA requests comments responding to the questions listed below. RSPA also invites comments on any aspect of this rulemaking action not specifically addressed by the questions. RSPA and FHWA encourage interested persons to participate in this rulemaking by submitting written views, data, and

information concerning this interim final rule. Commenters are requested to provide a reason or basis for each comment.

Additionally, RSPA and FHWA are seeking information pertaining to research and development related to the issues contained in this rule. This information may be presented at the public meeting.

1. NPGA has suggested the development of a “deadman” or a remote valve actuation system, possibly using a lanyard. Automobiles are commonly equipped with remote transmitter devices that fit on key rings to unlock doors or open trunk lids from 50 feet away. If such a manually activated device were used to close internal self-closing stop valves, would it provide a level of safety equivalent to the requirement for a passive automatic shut-down system required by § 178.337–11(a)(1)(i)?

2. What types of devices can provide the passive automatic shut-down function required by § 178.337–11(a)(1)(i)?

3. What tests are appropriate at the time of manufacture or assembly and at the time of requalification to ensure that the product discharge system will close as required by § 178.337–11(a)(1)(i)?

4. In view of the fact that specification MC 330 and MC 331 cargo tank motor vehicles are authorized for a broad range of hazardous materials, is it possible to design an emergency discharge control system that functions effectively with all liquefied compressed gases under all conditions normal to transportation? If not, should the manufacturer’s certification required under § 178.337–18 specify the materials and conditions that are acceptable for carriage in, or unloading of, the cargo tank?

5. Do manufacturers and assemblers of cargo tank motor vehicles provide operational and maintenance instructions to operators on the use of the cargo tank motor vehicles they supply? If so, provide examples of such information to RSPA.

6. Provide any information available on other interstate or intrastate incidents involving the failure of emergency control systems on cargo tanks authorized to transport liquefied compressed gases.

7. Are hoses used to transfer product from large transport cargo tank motor vehicles permanently attached or carried on the vehicles or supplied by the customer at the point of delivery?

8. RSPA is concerned that this problem may highlight a deficiency in the training programs for Design Certifying Engineers and those persons certifying cargo tanks as meeting the

requirements of the HMR. In addition, carrier function-specific training programs also may not be providing sufficient training in the specification requirements for these cargo tanks. What training is provided to those individuals who are responsible for certifying, operating, testing and repairing these cargo tank motor vehicles?

VIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and was reviewed by the Office of Management and Budget. The rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Because of the emergency nature of this rule, RSPA is not required to prepare a regulatory evaluation. Nevertheless, in an effort to minimize the burden of this rule, RSPA prepared a preliminary regulatory evaluation which is available in the public docket.

Because of the potential safety risk posed by continued transportation of liquefied compressed gases in specification MC 330 and MC 331 cargo tank motor vehicles that do not conform to the performance criteria for emergency discharge controls, RSPA has determined that good cause exists for making this rule effective less than 30 days from its issuance and that prior notice and opportunity to comment is impractical and contrary to public interest.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act), as amended, 5 U.S.C. 601–612, directs agencies to consider the potential impact of regulations on small business and other small entities. The Act, however, applies only to rules for which an agency is required to publish a notice of proposed rulemaking pursuant to section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553. See 5 U.S.C. 603(a) and 604(a). Because of the emergency nature of this rule, RSPA is authorized under section 553(b)(B) and section 553(d)(3) of the APA to forego notice and comment and to issue this rule as an interim final rule with an immediate effective date. Consequently, RSPA is not required under the Act to do a regulatory flexibility analysis in this rulemaking.

Specifically, section 553(b)(B) and section 553(d)(3) of the APA authorize agencies to dispense with certain

procedures for rules, including notice and comment, when they find “good cause” to do so. “Good cause” includes a finding that following notice-and-comment procedures would be “impracticable, unnecessary, or contrary to the public interest.” Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. “Good cause” has been held to include situations where immediate action is necessary to reduce or avoid health hazards or other imminent harm to persons or property, or where inaction would lead to serious dislocation in government programs or the marketplace.

Nevertheless, RSPA is concerned with the effect this rule may have on small business. Consequently, in preparing a preliminary regulatory evaluation under Executive Order 12866, RSPA has analyzed, based on information currently available to the agency, the impact of this rule on all affected parties, including small businesses. The preliminary regulatory evaluation is available for review in the public docket. In that preliminary evaluation, RSPA estimates that where an operator of bobtails chooses to comply with the arms-reach attendance requirement by use of a lanyard—as suggested by NPGA in its application for emergency exemption—the average annual cost per operator will be \$1,324. In addition, in this interim final rule RSPA is asking commenters to provide information to the agency regarding the economic, safety and other impacts of this rule so that the agency can make any necessary changes to the rule.

A small entity includes a small business, small organization or small governmental jurisdiction. For purposes of this discussion, a small business is deemed to be one which is independently owned and operated and which is not dominant in its field of operation. RSPA believes that the impacts of this rule are primarily addressed to businesses involving the distribution of liquefied petroleum gas and anhydrous ammonia, and to manufacturers and assemblers of cargo tanks used for the distribution of these products. Under the Small Business Administration’s size standard definitions (13 CFR Part 121), liquefied petroleum gas distributors with \$5 million or less in annual receipts, and manufacturers of truck or bus bodies or truck trailers that employ 500 or less individuals are small businesses. Based on available information, RSPA estimates that at least 90% of the businesses impacted by this rule are small businesses. RSPA further estimates there are at least 6,800

businesses and at least 25,000 cargo tank motor vehicles (7,000 “transports” and 18,000 “bobtails”) affected by this rule.

In order for RSPA to determine the potential impacts of this rule on small entities, small businesses affected by this final rule are requested to submit comments addressed to the impacts of this rule and other significant alternatives on small entities. Some of the considerations envisioned in assessing these impacts include the following:

1. Are RSPA’s estimates as to number of businesses affected by this rule, and the percentage of these which are small businesses, consistent with industry estimates? Are other estimates available as to the numbers of businesses and small businesses in each sector of business addressed by this rule (i.e., gas distributor, cargo tank manufacturer, cargo tank assembler) and numbers of cargo tank motor vehicles? Are there other business sectors affected? Are some geographic areas affected more than others (please identify)?

2. Are there alternatives to this rule which accomplish RSPA’s objectives, while imposing less of an impact on small businesses? What are those alternatives?

3. In what manner could differing compliance or reporting requirements be implemented for small businesses to take into account the resources available to small businesses? In what manner could compliance or reporting requirements be clarified, consolidated or simplified for such small businesses?

4. What are the direct and indirect costs of compliance with the rule, calculated both as absolute costs and as a percentage of revenue of the regulated small business?

5. What are the direct and indirect costs of completing paperwork or recordkeeping requirements, again both as absolute costs and as a percentage of revenue?

6. What is the effect of this rule, if any, on the competitive position of small entities in relation to larger entities?

7. What is the effect of this rule on the small entity’s cash flow and liquidity?

8. What is the effect of this rule on the ability of a small entity to remain in the market?

9. What is the availability and cost to the small entity for professional assistance to meet regulatory requirements?

10. Are there any Federal rules that duplicate, overlap or conflict with this rule?

C. 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 (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This interim final rule addresses covered subject item (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the Federal Register the effective date of Federal preemption. The 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 that the effective date of Federal preemption for these requirements will be May 20, 1997. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

D. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this final rule have been submitted for emergency approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995. Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

RSPA estimates that the total information collection and recordkeeping burden in this interim final rule is 17,575 hours, at a cost of \$376,875, for the development and maintenance of the comprehensive emergency operating procedure. These figures are based in RSPA's belief that standardized emergency operating procedures can be developed for use by a majority of industry members, thus reducing substantially the burden hours and cost to individual industry members of compliance with the emergency operating procedures requirement. Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590-0001. Telephone (202) 366-8553. Written comments should be received by the close of the comment period identified elsewhere in this rulemaking and should be addressed to the Dockets Unit as identified in the Addresses section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. RSPA will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

E. 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.

F. 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.

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 171 is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Sec. 4, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Sec. 31001, Pub. L. 104–134, 110 Stat. 1321; 49 CFR 1.45 and 1.53.

2. Section 171.5 is added to read as follows:

§ 171.5 Temporary regulation; liquefied compressed gases in cargo tank motor vehicles.

(a) Section 178.337–11 of this subchapter requires an excess flow feature as a part of the emergency discharge control system installed in a cargo tank motor vehicle used to transport certain liquefied compressed gases. Other regulations in Parts 173 and 180 of this subchapter reference this requirement or similar requirements in effect at the time of manufacture of a cargo tank. Notwithstanding this requirement, a DOT MC 330 or MC 331 specification cargo tank motor vehicle, or a non-specification cargo tank motor vehicle conforming to the requirements of § 173.315(k) of this subchapter, may, without certification and demonstrated performance of the excess flow feature of its emergency discharge control system, be represented for use and used to transport liquefied compressed gases under the following conditions:

(1) *Use.* The cargo tank motor vehicle must otherwise be operated, unloaded and attended in full conformance with all applicable requirements of this subchapter and the following additional requirements:

(i) Before initiating any transfer from the cargo tank motor vehicle, the person performing the function shall verify that each component of the discharge system is of sound quality, is free of leaks, and that connections are secure.

(ii) Prior to commencing transfer using a new or repaired transfer hose or a modified hose assembly, it must be pressure tested at no less than 80 percent of the design pressure or maximum allowable working pressure (MAWP) marked on the cargo tank. This test must include all hose and hose fittings and equipment arranged in the configuration to be employed during transfer operations. A hose or associated equipment that shows signs of leakage, significant bulging, or other defects, is not acceptable for use.

(iii) In addition to attendance requirements in § 177.834(i) of this subchapter, the person who attends the

unloading of a cargo tank motor vehicle must have an unobstructed view of the discharge system and be within arm's reach of a means for closure (emergency shut-down device) of the internal self-closing stop valve or other device that will immediately stop the discharge of product from the cargo tank.

(iv) If there is an unintentional release of lading to the environment during transfer, the qualified person attending the cargo tank shall immediately activate the internal self-closing stop valve and shut down all motive and auxiliary power equipment.

(v) A comprehensive emergency operating procedure must be developed for all transfer operations and hazmat employees who perform unloading functions must be thoroughly trained in its provisions. The emergency operating procedure must be prominently

displayed in or on the cargo tank motor vehicle.

(vi) As required by § 172.704 of this subchapter, each manufacturer, assembler, retester, motor carrier and other hazmat employer subject to the requirements of this section shall ensure that its hazmat employees are trained to properly perform these new function-specific requirements including the meaning of the marking specified in paragraph (b) of this section. The hazmat employer shall ensure that a record of the training is created, certified, and maintained as specified in § 172.704(d) of this subchapter.

(2) *Continuing qualification.* An existing in-service cargo tank motor vehicle may continue to be marked and documented as required by Part 180 of this subchapter if the following statement is added to the current

inspection report required by § 180.417(b) of this subchapter:

"Emergency excess flow control performance not established for this unit."

(3) *New vehicles.* A new (unused) cargo tank motor vehicle manufactured, marked and certified prior to August 16, 1997, may be marked and certified as conforming to specification MC 331 if it otherwise meets all requirements of the specification and the following statement is added to the certification document required by § 178.337-18 of this subchapter: "Emergency excess flow control performance not established for this unit."

(b) *Marking.* The following marking must be displayed on a cargo tank used in or represented for use under this section:

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OPERATING UNDER 49 CFR 171.5

(1) The letters must be white and the background black.

(2) The letters must be at least 1.5cm in height.

(3) The marking must be 6cm x 15cm.

(c) *Expiration date.* This section is effective February 19, 1997 through August 15, 1997.

Issued in Washington, DC on February 13, 1997 under authority delegated in 49 CFR part 1.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

[FR Doc. 97-4116 Filed 2-14-97; 12:09 pm]

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Wednesday
February 19, 1997

Part V

The President

**Executive Order 13036—Establishing an
Emergency Board To Investigate a
Dispute Between American Airlines and
its Employees Represented by the Allied
Pilots Association**

Presidential Documents

Title 3—

Executive Order 13036 of February 15, 1997

The President

Establishing an Emergency Board To Investigate a Dispute Between American Airlines and its Employees Represented by the Allied Pilots Association

WHEREAS, a dispute exists between American Airlines and its employees represented by the Allied Pilots Association; and

WHEREAS, the dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (45 U.S.C. 151–188) (the “Act”); and

WHEREAS, in the judgment of the National Mediation Board, this dispute threatens substantially to interrupt interstate commerce to a degree that would deprive sections of the country of essential transportation service,

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including sections 10 and 201 of the Act, 45 U.S.C. 160 and 181, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (“Board”).* There is established, effective February 15, 1997, a Board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of airline employees or any air carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to the dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 10 of the Act, from the date of the creation of the Board and for 30 days after the Board has submitted its report to the President, no change in the conditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board’s termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in sections 2 and 3 of this order.



THE WHITE HOUSE,
February 15, 1997.

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