3–28–97
Vol. 62 No. 60
Pages 14773–15082

federal register

Friday
March 28, 1997

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

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Presidential Documents

Title 3—

The President

Executive Order 13040 of March 25, 1997

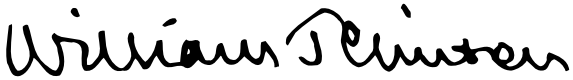
Amendment to Executive Order 13017, Advisory Commission on Consumer Protection and Quality in the Health Care Industry

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to expand membership and ensure broad-based representation for the Advisory Commission on Consumer Protection and Quality in the Health Care Industry and to revise the deadlines for the Commission's submission to the President of interim and final reports, it is hereby ordered as follows:

Section 1. Section 1(a) of Executive Order 13017 is amended by deleting the number ''20'' in the second sentence and inserting the number ''32'' in lieu thereof.

Sec. 2. Section 3 of Executive Order 13017 is amended to read as follows:

> ''**Sec. 3.** *Reports.* The Commission shall make a preliminary report to the President by January 31, 1998. A final report shall be submitted to the President by March 30, 1998.''



THE WHITE HOUSE,
March 25, 1997.

[FR Doc. 97–8123
Filed 3–27–97; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 62, No. 60
Friday, March 28, 1997

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Fresh Market Tomato Minimum Value Option, and Fresh Market Tomato (Dollar Plan) Endorsement; and Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market (dollar plan) tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Tomato (Dollar Plan) Endorsement and the Fresh Market Tomato Minimum Value Option with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Minimum Value Option and the Fresh Market Tomato (Dollar Plan) Endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office and Management Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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. 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, December 30, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 68682–68688 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.139, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding

crop years. These provisions will replace and supersede the current provisions for insuring fresh market tomatoes (dollar plan) found at 7 CFR 401.137 (Fresh Market Tomato Minimum Value Option) and 7 CFR 401.139 (Fresh Market Tomato (Dollar Plan) Endorsement). This rule also amends 401.137 and 401.139 to limit their effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve 401.137 and 401.139.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. A total of 14 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

Comment: The crop insurance industry questioned removing the term ''marketable'' from the definition of harvest. The commenter questioned if it was intended that the final stage of insurance on a unit would begin at such time that unmarketable tomatoes were harvested.

Response: The current regulation created confusion since it suggested that if the tomatoes were not marketable, they would not be considered as harvested for the purposes of determining the insurance period, calculation of any claims, etc. The picking of tomatoes on the unit, whether marketable or not, is considered harvested. The final stage of insurance on the unit begins when any tomatoes are harvested, whether marketable or not. Requirements of good farming practices will prevent the harvest of tomatoes before they are ready. Section 14 contains provisions to determine the amount of production to be counted for harvested and unharvested, including tomatoes that are not marketable. Therefore, no changes were made to the definition.

Comment: One comment from the crop insurance industry recommended clarifying the language in section 2(a) by stating ''Basic units, as defined in section 1 (Definitions) of the Basic Provisions, will be established by planting period.''

Response: FCIC agrees with the comment and has amended section 2(a) to indicate a basic unit will be established by planting period. However, the definition of ''unit'' is contained in the Basic Provision and no change will be made in that portion of the provision.

Comment: One comment received from the crop insurance industry stated that the references to land measurements such as leagues and labors was unnecessary. These types of land measurement were not applicable in Florida and crop insurance for fresh market tomatoes (dollar plan) is only available in Florida.

Response: Fresh market tomato (dollar plan) insurance may be expanded into other areas where such measurements are applicable. Therefore, no change will be made.

Comment: One comment from the crop insurance industry stated that section 3 of the crop provisions contained a heading in the stage chart that was misleading. The chart heading suggested that the percentages represented coverage levels that the insured would select rather than the amount of insurance that is selected by the insured. The commenter suggested that the chart heading should state, ''Percent in effect of your amount of insurance.''

Response: FCIC believes the heading of the stage chart is clearly stated. Therefore, no change has been made.

Comment: One comment received from an FCIC RSO recommended adding a provision to section 6 that requires the insured to report all of the dates the insured acreage was planted within each planting period.

Response: FCIC concurs with the comment and has added a provision accordingly.

Comment: The crop insurance industry questioned if the provision in section 9(a) that states we will insure newly cleared land or former pasture land planted to fresh market tomatoes was new to the fresh market tomato (dollar plan) crop insurance policy. The commenter asked if a waiting period was applicable before insurance attached to land which had been newly cleared and, if the provision is new to the crop insurance policy, questioned why it was added.

Response: The provision for insurance on newly cleared land is not new to the fresh market tomato (dollar plan) crop insurance policy. However, FCIC has clarified the provision so that former pasture land planted to the insured crop is also insurable. It is a recommended practice for the fresh market vegetable crops to be planted on newly cleared and former pasture land so no waiting period is required prior to planting the insured crop.

Comment: One comment received from the crop insurance industry questioned if FCIC intended to liberalize the current fresh market tomato (dollar plan) crop provisions by stating in section 9(b)(3) that we will not insure any acreage which, in the preceding planting period, was planted to tomatoes, peppers, eggplants, or tobacco unless the soil has been fumigated or properly treated.

Response: FCIC did not intend to liberalize the requirements. Tomatoes that have been replanted do not have to be fumigated or treated because nematodes will not have developed yet. However, crops previously planted on the same acreage may host nematodes that will damage the insured crop. Chemicals that are used to fumigate or treat the acreage last only two to three months. As a result, any acreage previously planted to tomatoes, peppers, eggplants and tobacco must be fumigated or treated prior to planting the insured crop. Therefore, FCIC has amended the provision.

Comment: The crop insurance industry questioned if the phrase ''coverage begins * * * the later of the date we accept your application, or when the tomatoes are planted in each planting period'' means that an application could be accepted after the sales closing to have coverage for subsequent planting periods in the crop year. The industry questioned the purpose of having one sales closing date for the crop.

Response: Section 10 of these provisions does not alter the requirement contained in the Basic Provisions, which states the application must be submitted by the sales closing date. The sales closing date corresponds with the earliest planting period so only one application is filed for the crop year and covers all subsequent planting periods. Since there are multiple planting periods in each crop year, the date insurance attaches in each planting period must be established. Provisions in section 10 simply clarify when insurance will attach. Therefore, no change will be made.

Comment: The crop insurance industry recommended the cause of loss due to tropical depression be changed to ''excessive winds sufficient to damage the crop.'' The change would provide coverage for damage due to winds associated with stalled fronts, severe thunderstorms, storms or gales. The commenter indicated a stalled high and low pressure system with winds in excess of 60 mph caused damage in November, 1996, that was not covered by the current crop insurance policy.

Response: The current endorsement provides coverage against wind or excess precipitation occurring in conjunction with a cyclone. FCIC agrees that damage to the insured crop may occur from systems other than a cyclone. FCIC clarified the provision to state that a tropical depression which occurs within the insurance period is an insured cause of loss. Tropical

depression is defined as a system identified by the U.S. Weather Service, and includes tropical depressions, hurricanes, tropical storms and gales. Therefore, no change will be made.

Comment: One comment from the crop insurance industry recommended removing disease and insect infestation as uninsured causes of loss. The commenter suggested that disease and insects should be an insured cause of loss if a producer exhausts all reasonable means to protect the crop. This would provide coverage for new diseases and insects that cannot presently be controlled by the chemicals that are available.

Response: FCIC agrees that coverage should be available for damage due to disease and insect infestation for which no effective control measure exists. Therefore, FCIC has amended the provisions contained in section 11(b)(1) accordingly.

Comment: One comment from the crop insurance industry recommended raising the maximum amount of the replanting payment per acre to approximately $265.00. The $175.00 maximum amount provided in the current crop policy is not sufficient to cover actual costs.

Response: FCIC agrees there may be instances when replanting costs exceed $175.00 per acre. Therefore, provisions contained in section 12(b) have been revised to state that the maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting, or the result obtained by multiplying the maximum amount of the replanting payment contained in the applicable Special Provisions by your insured share.

Comment: One comment from the crop insurance industry recommended that the allowable cost contained in section 14 be raised by $.50.

Response: The amount of allowable costs are provided in the Special Provisions to allow the flexibility to adjust the amount at appropriate levels. Therefore, no change will be made.

Comment: The crop insurance industry suggested combining the provisions contained in section 15(e) with the provisions in section 15(a).

Response: Approval of written agreements requested after the sales closing date is the exception, not the rule. Therefore, these provisions should be kept separate and no changes have been made.

Comment: The crop insurance industry recommended that the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow the written agreement to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no changes will be made.

In addition to the changes described above, FCIC has made the following changes to the Fresh Market Pepper Crop Provisions:

1. Section 1—Definition of ''potential production'' was amended to state the classification size for cherry or plum tomatoes will be contained in the written agreement. Cherry and plum tomatoes are currently insured by written agreement.

2. Section 3(c)—Delete this provision and renumber the remaining provisions. This change is to provide consistency with other fresh market vegetable crops.

3. Section 16(b)(1)(i)—Delete $2.00 as the specified lowest dollar amount obtained when computing the minimum value per carton of tomatoes sold. The minimum value option price will now be contained in the Special Provisions to allow FCIC to ensure that the price is correct for the county.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the fresh market tomato (dollar plan) insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is April 30, 1997. It is therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to make the rule effective upon publication.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market (dollar plan) tomato crop insurance regulations, Fresh market (dollar plan) tomatoes.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years to read as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 401.137 introductory text is revised to read as follows:

§ 401.137 Fresh market tomato minimum value option.

The provisions of the Fresh Market Tomato Minimum Value Option for the 1991 through the 1997 crop years are as follows:

* * * * *

3. Section 401.139 introductory text is revised to read as follows:

§ 401.139 Fresh market tomato (dollar plan) endorsement.

The provisions of the Fresh Market Tomato Crop Insurance Endorsement for the 1991 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. Section 457.139 is added to read as follows:

§ 457.139 Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions.

The Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh market tomato (dollar plan) crop provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Acre—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Carton—Twenty-five (25) pounds of the insured crop.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted tomatoes and continues through the last day of the insurance period for spring planted tomatoes. The crop year is designated by the calendar year in which spring planted tomatoes are harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of tomatoes on the unit.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

Mature green tomato—A tomato that:

(1) Has a glossy waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so as to be pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, transplants or seed have been placed manually or by a machine appropriate for the insured crop and planting method, at the correct depth, into soil that has been properly prepared for the planting method and production practice. For each planting period, tomatoes must initially be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which the tomatoes must be planted to be considered fall, winter or spring-planted tomatoes.

Potential production—The number of cartons of mature green or ripe tomatoes that the tomato plants will or would have produced per acre, assuming normal growing conditions and practices, by the end of the insurance period:

(a) With a classification size of 6×7 (2 8/32 inch minimum diameter) or larger for all types except cherry or plum tomatoes; or

(b) With a classification size as allowed by written agreement for cherry or plum tomatoes.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Replanting—Performing the cultural practices necessary to replace the tomato seed or transplants and then replacing the tomato seed or transplants in the insured acreage with the expectation of growing a successful crop.

Ripe tomato—A tomato that has a definite break in color from green to tannish-yellow, pink or red.

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

Written agreement—A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division

(a) In addition to the requirements contained in section 1 (Definitions) of the Basic Provisions (§ 457.8) (basic unit), a basic unit will also be established by planting period.

(b) Unless limited by the Special Provisions, basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the insured crop was planted;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the tomatoes in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to fresh market dollar plan tomatoes.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of amount of insurance per acre that you selected	Length of time if direct seeded	Length of time if transplanted
1	50	From planting through the 59th day after planting	From planting through the 29th day after planting.
2	75	From the 60th day after planting until the beginning of stage 3.	From the 30th day after planting until the beginning of stage 3.
3	90	From the 90th day after planting until the beginning of the final stage.	From the 60th day after planting until the beginning of the final stage.
Final	100	Begins the earlier of 105 days after planting, or the beginning of harvest.	Begins the earlier of 75 days after planting, or the beginning of harvest.

(e) Any acreage of tomatoes damaged in the first, second, or third stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

(a) All the acreage of tomatoes in the county insured under this policy in which you have a share;

(b) The dates the acreage was planted within each planting period; and

(c) The row width.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.*, fall direct-seeded irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the tomatoes in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share;

(b) That are:

(1) Planted to be harvested and sold as fresh market tomatoes;

(2) Planted within the planting periods designated in the Actuarial Table;

(3) Grown under an irrigated practice;

(4) Grown on acreage covered by plastic mulch except where the Special Provisions allows otherwise;

(5) Grown by a person who in at least one of the three previous crop years:

(i) Grew tomatoes for commercial sale; or

(ii) Participated in managing a fresh market tomato farming operation;

(c) That are not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume;

(3) Grown for direct marketing; or

(4) Plum or cherry type tomatoes, unless allowed by written agreement.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land and former pasture land planted to fresh market tomatoes.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of tomatoes damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and

(i) It is practical to replant;

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and

(iii) The damage occurs within 30 days of transplanting or 60 days of direct seeding.

(2) Whenever tomatoes initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1) (ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage on which tomatoes (except for replanted tomatoes in accordance with sections 9(b) (1) and (2)), peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the tomatoes are planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the tomatoes on the unit;

(b) Abandonment of the tomatoes on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) The calendar date for the end of the insurance period as follows:

(1) 140 days after the date of direct seeding or replanting with seed; and

(2) 125 days after the date of transplanting or replanting with transplants.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Excess rain;

(2) Fire;

(3) Freeze;

(4) Hail;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the tomatoes, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions

(§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce tomatoes and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you must also give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(3) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of cartons of appraised tomatoes by the minimum value per carton shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the second time for ground-culture tomatoes (the third time for staked tomatoes);

(ii) Unharvested mature green tomatoes (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value shown in the Special Provisions for any carton of tomatoes), and multiplying this result by the number of cartons of tomatoes harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market tomatoes (dollar plan) under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each carton of tomatoes (this result may not be less than the minimum value option price contained in the Special Provisions for any cartons of tomatoes), and multiplying this result by the number of carton of tomatoes sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of cartons of such tomatoes on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section (16)(b)(1)(i) may not be less than zero.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, DC., on March 24, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–7942 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–FA–P

7 CFR Parts 401 and 457

General Crop Insurance Regulations, Fresh Market Sweet Corn Endorsement; and Common Crop Insurance Regulations, Fresh Market Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Fresh Market Sweet Corn Endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Fresh Market Sweet Corn Endorsement to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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. 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, January 3, 1997, FCIC published a proposed rule making, in the **Federal Register** at 62 FR 333–338 to add to the Common Crop Insurance Regulations (7 CFR part 457) a new section, 7 CFR 457.129, Fresh Market Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market sweet corn found at 7 CFR 401.138 (Fresh Market Sweet Corn Endorsement). This rule also amends § 401.138 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve § 401.138.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. A total of 21 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received, and FCIC's responses, are as follows:

Comment: A representative of FCIC recommended adding carton to the definition of crate. To expand fresh market sweet corn insurance, the method of measuring production to count must be applicable to other areas. The commenter stated cartons containing 48 to 52 ears were used in the midwest.

Response: FCIC agrees that revising the unit of measure would allow expansion of fresh market sweet corn crop insurance into areas that utilize units of measure other than the standard crate. The provisions have been amended to replace the term ''crate'' with the term ''container''. The definition of ''container'' specifies the unit of measure and the number of pounds or number of ears of the insured crop will be specified in the Special Provisions.

Comment: A representative of FCIC recommended adding to the definition

of excess wind, ''or an occurrence at a time that prevents adequate pollination''.

Response: FCIC agrees with the comment and has amended the provision contained in section 1 accordingly.

Comment: One comment from the crop insurance industry recommended clarifying the language in section 2(a) by stating ''Basic units, as defined in section 1 (Definitions) of the Basic Provisions, will be established by planting period.''

Response: FCIC agrees with the comment and has amended section 2(a) to indicate a basic unit will be established by planting period. However, the definition of ''unit'' is contained in the Basic Provision and no change will be made in that portion of the provision.

Comment: One comment received from the crop insurance industry stated that the references to land measurements such as leagues and labors was unnecessary. These type of land measurement were not applicable to the Southeast and crop insurance for fresh market sweet corn is only available in the Southeast.

Response: Fresh market sweet corn insurance may be expanded into other areas where such measurements are applicable. Therefore, no change will be made.

Comment: The crop insurance industry questioned if it was necessary to specify in section 3(c) that the CAT amount of insurance will be in the Actuarial Table when all available amounts of insurance are specified in section 3(a).

Response: FCIC agrees section 3(a) states the coverage levels and amounts of insurance are contained in the Actuarial Table. As section 3(c) provides no additional statements or requirements, FCIC has deleted this provision and renumbered the remaining provisions.

Comment: One comment from the crop insurance industry stated section 3 contained a heading in the stage chart and a statement within the chart was misleading. The chart heading suggested the percentages represented coverage levels that the insured would select rather than the amount of insurance that is selected by the insured and that the chart statement ''until the acreage is harvested'' suggests there is a stage after the final stage for after harvest. The commenter suggested the chart heading should state. ''Percent in effect of your amount of insurance.''

Response: FCIC believes the wording in the stage chart is clearly stated. Therefore, no change will be made.

Comment: A representative of FCIC recommended the final stage contained in Section 3(d) should be the harvested stage. The commenter indicated they did not understand why the final stage would begin at tasseling.

Response: Fresh market sweet corn insurance is structured to cover most of the producer's pre-harvest costs in case of a crop failure. To assure indemnities are paid based on the costs incurred at the time of loss, the crop maturity stages and corresponding maximum dollar amount of insurance represent the levels at which a producer has incurred the pre-harvest cost. FCIC has determined that a producer has reached 100 percent of the pre-harvest costs when the sweet corn crop reaches tasseling and, therefore, receives 100 percent of the per acre dollar amount of insurance. FCIC believes the stage levels are representative of the program objectives and no changes will be made.

Comment: A representative of FCIC recommended deleting from the list of states with a contract change date of November 30, the specific state names of Alabama and South Carolina. The provision already specifies ''all other states''.

Response: FCIC agrees with the comment and has amended section 4 accordingly.

Comment: The crop insurance industry recommended a grammatical change in section 7, to add a comma and hyphen in ''e.g., fall-planted irrigated.''

Response: FCIC agrees with the comment and has amended the provision in section 7 accordingly.

Comment: An FCIC representative recommended changing section 8(b)(3) to allow insurance on non-irrigated acreage. Production of fresh market sweet corn on non-irrigated acreage is a recommended farming practice in Iowa, Minnesota and Wisconsin.

Response: FCIC has amended the provision contained in section 8(b)(3) to state that the insured crop will be ''grown under an irrigated practice, unless otherwise provided in the Special Provisions'' to allow expansion into other areas as appropriate.

Comment: The crop insurance industry stated the provision in section 9(a) that states we will insure newly cleared land or former pasture land planted to fresh market sweet corn is new to the crop provisions. The commenter questioned if a waiting period was required before planting the insured crop on newly cleared or former pasture land.

Response: To provide consistency among the fresh market vegetable crops, FCIC incorporated provisions contained in other fresh market crop endorsements and also clarified that former pasture land planted to the insured crop is insurable. It is a recommended practice for the fresh market vegetable crops to be planted on newly cleared and former pasture land so no waiting period is required prior to planting the insured crop.

Comment: The crop insurance industry questioned if the phrase ''coverage begins . . . the later of the date we accept your application, or when the sweet corn is planted in each planting period'' means that an application could be accepted after the sales closing to have coverage for subsequent planting periods in the crop year. If so, what is the purpose of having one sales closing date for the crop?

Response: Section 10 of these provisions do not alter the requirement contained in section 11 of the Basic Provisions, which states the application must be submitted by the sales closing date. The sales closing date corresponds to the earliest planting period so only one application is filed for the crop year and covers all subsequent planting periods. Since there are multiple planting periods in each crop year, the date insurance attaches in each planting period must be established. Provisions in section 10 simply clarify when insurance will attach. Therefore, no change will be made.

Comment: Two comments from the crop insurance industry and two comments from FCIC representatives recommended removing disease and insect infestation as uninsured causes of loss. The commenters suggested that disease and insects should be an insured cause of loss if a producer exhausts all reasonable means to protect the crop. This would provide coverage for new diseases and insects that cannot presently be controlled by the chemicals that are available.

Response: FCIC agrees that coverage should be available for damage due to disease and insect infestation for which no effective control measure exists. Therefore, FCIC has amended the provisions contained in section 11(b)(1) accordingly.

Comment: Two comments from the crop insurance industry recommended raising the maximum amount of the replanting payment per acre. Both commenters stated the maximum amount provided in the current policy is not sufficient to cover actual costs.

Response: FCIC agrees there may be instances when replanting costs exceed $65.00 per acre as provided in the current endorsement. Therefore, provisions contained in section 12(b) have been revised to state that the maximum amount of the replanting

payment per acre will be the lesser of your actual cost of replanting, or the result obtained by multiplying the maximum amount of the replanting payment contained in the applicable Special Provisions by your insured share.

Comment: The crop insurance industry suggested combining the provisions in section 15(e) with the provisions in 15(a).

Response: Approval of written agreements requested after the sales closing date is the exception, not the rule. Therefore, these provisions should be kept separate and no changes have been made.

Comment: The crop insurance industry recommended the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow written agreements to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

Comment: One comment from the crop insurance industry expressed concerns regarding payment of additional premium under the provisions of the minimum value option. In prior years, producers received an allowable cost of $2.50 per crate for no additional premium charge.

Response: FCIC believes the commenter misunderstood the provisions contained in the minimum value option. To provide consistency among the fresh market vegetable crops, FCIC incorporated the minimum value option into the sweet corn provisions. The minimum value option will, for an additional premium, allow the total value of production to count on a unit to be as low as zero. The additional premium charge will be for those producers who elect the minimum value option. For those producers who do not elect the minimum value option, section 14 provides that the total value of production to count will be the greater of: (1) the price received for each container minus the allowable cost; or (2) the minimum value per container. No changes will be made.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the fresh market sweet corn insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is April 30, 1997. It is therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to make the rules effective upon publication.

List of Subjects in 7 CFR Parts 401 and 457

Crop insurance, Fresh market sweet corn crop insurance regulations, Fresh market sweet corn.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 effective for the 1998 and succeeding crop years to read as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. In § 401.138 the introductory paragraph is revised to read as follows:

§ 401.138 Fresh market sweet corn endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.129 is added to read as follows:

§ 457.129 Fresh market sweet corn crop insurance provisions.

The Fresh Market Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh Market Sweet Corn Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Container—The unit for measurement of the insured crop as specified in the Special Provisions.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted sweet corn and continues through the last day of the insurance period for spring planted sweet corn. The crop year is designated by the calendar year in which spring planted sweet corn is harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

Excess wind—Wind speed strong enough to prevent adequate pollination or cause lodging of stalks and prevent a normal harvest.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of sweet corn on the unit.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

Marketable sweet corn—Sweet corn that meets the standards for grading U.S. No. 1 or better and will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

For each planting period, fresh market sweet corn must initially be planted in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which fresh market sweet corn must be planted to be considered fall, winter, or spring-planted sweet corn.

Potential production—The number of containers of sweet corn that the sweet corn plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain seed will not be considered when determining if it is practical to replant).

Replanting—Performing the cultural practices necessary to replace the sweet corn seed and then replacing the sweet corn seed in the insured acreage with the expectation of growing a successful crop.

Sweet corn—A type of corn with kernels containing a high percentage of sugar that is adapted for human consumption as a vegetable.

Written agreement—A written document that alters designated terms of a policy in accordance with section 15.

2. Unit Division

(a) In addition to the requirements contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit), a basic unit will also be established by planting period.

(b) Unless limited by the Special Provisions, these basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the crop was planted;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the sweet corn in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), do not apply to fresh market sweet corn.

(d) The amounts of insurance are progressive by stages as follows:

Stage	Percent of the amount of insurance per acre that you selected	Length of time
1	65	From planting through the beginning of tasseling (which is when the tassel becomes visible above the whorl).
Final	100	From tasseling until the acreage is harvested.

(e) Any acreage of sweet corn damaged in the first stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date shown below is the date preceding the cancellation date:

State and county	Date
All Florida counties; and all Georgia counties for which the Special Provisions designate a fall planting period.	April 30.
All Georgia counties for which the Special Provisions do not designate a fall planting period; and all other States.	November 30.

5. Cancellation and Termination dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination Dates
Florida; Atkinson, Baker, Berrien, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all counties south thereof for which the Special Provisions designate a fall planting period.	July 31.
Alabama; South Carolina; and all Georgia Counties for which the Special Provisions do not designate a fall planting period.	February 15.
All other States	March 15.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period, all the acreage of sweet corn in the county insured under this policy in which you have a share.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.*, fall-planted irrigated) is determined by multiplying the final stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the sweet corn in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share;

(b) That is:

(1) Planted to be harvested and sold as fresh market sweet corn;

(2) Planted within the planting periods designated in the Actuarial Table;

(3) Grown under an irrigated practice, unless otherwise provided in the Special Provisions;

(4) Grown by a person who in at least one of the three previous crop years:

(i) Grew sweet corn for commercial sale; or

(ii) Participated in managing a sweet corn farming operation;

(c) That is not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Grown for direct marketing.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market sweet corn.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of sweet corn damaged during the planting period in which initial planting took place whenever less than 75 percent of the plant stand remains: and

(i) It is practical to replant: and

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed.

(2) Whenever sweet corn initially is planted during the fall or winter planting periods and the condition specified in section 9(b)(1)(ii) is not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the sweet corn is planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Abandonment of the sweet corn on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) 100 days after the date of planting or replanting.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Excess rain;

(2) Excess wind;

(3) Fire;

(4) Freeze;

(5) Hail;

(6) Tornado; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the sweet corn, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 25 percent of the plant stand will not produce sweet corn and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), limiting a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(e));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) times:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of containers of appraised sweet corn times the minimum value per container shown in the Special Provisions for the planting period:

(i) Unharvested production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each container of sweet corn (this result may not be less than the minimum value shown in the Special Provisions for any container of sweet corn), and multiplying this result by the number of containers of sweet corn harvested. Harvested mature sweet corn that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market sweet corn under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each container of sweet corn (this result may not be less than zero for any container of sweet corn), and multiplying this result by the number of containers of sweet corn sold; and

(2) For marketable production that is not sold, the dollar amount obtained by multiplying the number of containers of such sweet corn on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, DC, on March 24, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–7943 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–FA–P

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7 CFR Parts 445 and 457

Pepper Crop Insurance Regulations; and Common Crop Insurance Regulations, Fresh Market Pepper Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of fresh market peppers. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current Pepper Crop Insurance Regulations under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current Pepper Crop Insurance Regulations to the 1997 and prior crop years.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates 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. 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. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political

subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Friday, January 3, 1997, FCIC published a proposed rule in the **Federal Register** at 61 FR 338–343 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.148, Fresh Market Pepper Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring fresh market peppers found at 7 CFR part 445 (Pepper Crop Insurance Regulations). This rule also amends 7 CFR part 445 to limit its effect to the 1997 and prior crop years. FCIC will later publish a regulation to remove and reserve part 445.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data and opinions. A total of 21 comments were received from the crop insurance industry and FCIC Regional Service Offices (RSO). The comments received and FCIC's responses, are as follows:

Comment: The crop insurance industry questioned removing the term ''marketable'' from the definition of harvest. The commenter questioned the affect when the final stage of insurance on a unit can be triggered by the beginning of harvest, even if none of the crop is marketable.

Response: The current regulation created confusion since it suggested that if the peppers were not marketable, they would not be considered as harvested for the purposes of determining the insurance period, calculation of any claim, etc. The picking of peppers on the unit, whether marketable or not, is considered harvested. The final stage of insurance on the unit begins when any peppers are harvested, whether marketable or not. Requirements of good farming practices will prevent harvest of the peppers before they are ready. Section 14 contains provisions to determine the amount of production to be counted for harvested and unharvested, including peppers that are not marketable. Therefore, no change will be made to the definition.

Comment: One comment from the crop insurance industry recommended clarifying the language in section 2(a) by stating ''Basic units, as defined in section 1 (Definitions) of the Basic Provisions, will be established by planting period.''

Response: FCIC agrees with the comment and has amended section 2(a) to indicate a basic unit ''will be established by planting period.'' However, the definition of ''unit'' is contained in the Basic Provisions and no change will be made in that portion of the provision.

Comment: One comment from the crop insurance industry stated that references to land measurements such as leagues and labors contained in section 2, Unit Division, was unnecessary. These types of land measurement were not applicable in Florida and fresh market pepper crop insurance is only available in Florida.

Response: Fresh market pepper insurance may be expanded into other areas where such measurements are applicable. Therefore, no changes will be made.

Comment: The crop insurance industry questioned if it was necessary to specify in section 3(c) that the CAT amount of insurance will be in the Actuarial Table when all available amounts of insurance are specified section 3(a).

Response: FCIC agrees section 3(a) states the coverage levels and amounts of insurance are contained in the Actuarial Table. As section 3(c) provides no additional statements or requirements, FCIC has deleted this provision and renumbered the remaining provisions.

Comment: One comment from the crop insurance industry stated section 3 of the crop provisions contained a heading in the stage chart that was misleading. The chart heading suggested the percentages represented coverage levels that the insured would select rather than the amount of insurance that is selected by the insured. The commenter suggested the chart heading should state, ''Percent in effect of your amount of insurance.''

Response: FCIC believes the heading of the stage chart is clearly stated. Therefore, no change will be made.

Comment: One comment received from an FCIC RSO recommended clarifying the Basic Provisions, by adding a provision in section 6 to state that the insured must report the dates the insured acreage was planted within each planting period.

Response: FCIC concurs with the comment and had added a provision accordingly.

Comment: The crop insurance industry recommended a grammatical change in section 7, to add a comma and hyphen in ''e.g., fall direct-seeded irrigated.''

Response: FCIC agrees with the comment and has amended the provision in section 7 accordingly.

Comment: The crop insurance industry questioned if the provision in section 9(a) that states we will insure

newly cleared land or former pasture land planted to fresh market peppers is new to the crop provisions and if a waiting period was applicable before insuring fresh market peppers on newly cleared land or former pasture land.

Response: To provide consistency among the fresh market vegetable crops, FCIC clarified that former pasture land planted to the insured crop is also insurable. It is a recommended practice for the fresh market vegetable crops to be planted on newly cleared and former pasture land so no waiting period is required prior to planting the insured crop.

Comment: One comment from the crop insurance industry stated section 9(b)(3) was confusing due to the ''except as allowed in section 9(b) (1) and (2)'', and they could not determine what was or was not allowed. The commenter stated that if it was intended to allow coverage without fumigation on peppers planted in the next planting period after peppers were planted but not carried to harvest the previous period, then the exception should only refer to section 9(b)(2)(ii). Provisions contained in section 9(b) (1) and (2) refer to peppers planted and replanted and it would seem that fumigation would be necessary before planting peppers again the following planting period. If the exceptions in section 9(b) applied to peppers following peppers, why wouldn't the exceptions also apply to peppers following tomatoes, eggplants or tobacco?

Response: Acreage previously planted to peppers, tomatoes, eggplants or tobacco may host nematodes that will damage the insured crop. Chemicals that are used to fumigate or treat the acreage will last two to three months. However, in those situations where the crop was destroyed shortly after planting and is replanted, there is little risk from nematodes and fumigation is not required. FCIC has amended the provisions to clarify that fumigation is required whenever the crop was previously planted to peppers, tomatoes, eggplants or tobacco and that it does not apply to replanted peppers.

Comment: The crop insurance industry questioned if the phrase ''coverage begins * * * the later of the date we accept your application, or when the peppers are planted in each planting period'' means that an application could be accepted after the sales closing to have coverage for subsequent planting periods in the crop year. If so, what is the purpose of having one sales closing date for the crop?

Response: Section 10 of these provisions do not alter the requirement contained in the Basic Provisions, which states the application must be submitted by the sales closing date. The sales closing date corresponds to the earliest planting period, so only one application is filed for the crop year and covers all subsequent planting periods. Since there are multiple planting periods in each crop year, the date insurance attaches in each planting period must be established. Provisions in section 10 simply clarify when insurance will attach. Therefore, no change will be made.

Comment: One comment from the crop insurance industry questioned if it was valid to extend the end of the insurance period for Florida from 150 days to 165 days after the date of direct seeding.

Response: In addition to allowing expansion of fresh market pepper insurance coverage into other areas, FCIC's RSO obtained data from the University of Florida Research Center that indicated direct seeded peppers required an additional 15 days more than transplanted peppers to reach maturity. This change provides assurance that all mature production will be included as production to count.

Comment: Two comments from the crop insurance industry recommended the cause of loss due to tropical depression be changed to ''excessive winds sufficient to damage the crop.'' The change would provide coverage for damage due to winds associated with stalled fronts, severe thunderstorms, storms or gales. One of the commenters indicated a stalled high and low pressure system with winds in excess of 60 mph caused damage in November, 1996, which was not covered by the current insurance policy.

Response: The current regulation defined a tropical depression as a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion. FCIC agrees that damage to the insured crop may occur from systems other than a tropical depression. FCIC clarified the definition of tropical depression to state that it is a system identified by the U.S. Weather Service, and includes tropical depressions, hurricanes, tropical storms and gales. Therefore, no change will be made.

Comment: Two comments from the crop insurance industry recommended removing disease and insect infestation as uninsured causes of loss. The commenters suggested that disease and insects should be an insured cause of loss if a producer exhausts all reasonable means to protect the crop. This would provide coverage for new diseases and insects that cannot presently be controlled by the chemicals that are available.

Response: FCIC agrees that coverage should be available for damage due to disease and insect infestation for which no effective control measure exists. Therefore, FCIC has amended the provisions contained in section 11(b)(1) accordingly.

Comment: Two comments from the crop insurance industry recommend raising the maximum amount of the replanting payment per acre. Both commenters stated the maximum amount provided in the current policy is not sufficient to cover actual costs.

Response: FCIC agrees there may be instances when replanting costs exceed $300.00 per acre as provided in the current regulation. Therefore, provisions contained in section 12(b) have been revised to state that the maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting, or the result obtained by multiplying the maximum amount of the replanting payment contained in the applicable Special Provisions by your insured share.

Comment: Two comments from the crop insurance industry questioned if the dollar amount of the allowable cost contained in the Special Provisions has been reviewed to determine if the cost is sufficient. One of the commenters recommended raising the allowable cost by $.50.

Response: The amount of allowable costs are provided in the Special Provisions to allow the flexibility to set the amount at appropriate levels. Therefore, no changes will be made.

Comment: The crop insurance industry suggested combining the provisions contained in section 15(e) with the provisions in section 15(a).

Response: Approval of written agreements requested after the sales closing date is the exception, not the rule. Therefore, these provisions should be kept separate and no changes have been made.

Comment: The crop insurance industry recommended the requirement for a written agreement to be renewed each year be removed. Terms of the agreement should be stated in the agreement to fit the particular situation for the policy, or if no substantive changes occur from one year to the next, allow written agreements to be continuous.

Response: Written agreements are intended to change policy terms or permit insurance in unusual situations where such changes will not increase risk. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is

important to minimize exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no changes will be made.

In addition to the changes described above, FCIC has made the following change to the Fresh Market Pepper Crop Provisions:

1. Section 16(b)(1)(i)—Delete $2.75 as the specified lowest dollar amount obtained when computing the minimum value per box of peppers sold. The minimum value option price will now be contained in the Special Provisions to allow FCIC to ensure that the price is correct for the county.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the fresh market pepper insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is April 30, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to make the rule effective upon publication.

List of Subjects in 7 CFR Parts 445 and 457

Crop insurance, Pepper crop insurance regulations, Fresh market peppers.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 445 and 457 effective for the 1998 and succeeding crops, to read as follows:

PART 445—PEPPER CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 445 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The subpart headings preceding § 445.1 is revised to read as follows:

Subpart—Regulations for the 1987 Through the 1997 Crop Years

3. Section 445.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 445.7 The application and policy.

* * * * *

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pepper Crop Insurance Policy for the 1987 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. Section 457.148 is added to read as follows:

§ 457.148 Fresh Market Pepper Crop Insurance Provisions.

The Fresh Market Pepper Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Fresh Market Pepper Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Acre—43,560 square feet of land when row widths do not exceed six feet, or if row widths exceed six feet, the land area on which at least 7,260 linear feet of rows are planted.

Bell pepper—An annual pepper (of the capsicum annum species, grossum group), widely cultivated for its large, crisp, edible fruit.

Box—One and one-ninth (1⅑) bushels of the insured crop.

Crop year—In lieu of the definition of ''crop year'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), crop year is a period of time that begins on the first day of the earliest planting period for fall planted peppers and continues through the last day of the insurance period for spring planted peppers. The crop year is designated by the calendar year in which spring planted peppers are harvested.

Days—Calendar days.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain—An amount of precipitation sufficient to directly damage the crop.

FSA—The Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

Freeze—The formation of ice in the cells of the plant or its fruit, caused by low air temperatures.

Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest—The picking of peppers on the unit.

Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed for the insured crop to make normal progress toward maturity.

Mature bell pepper—A pepper that has reached the stage of development that will withstand normal handling and shipping.

Plant stand—The number of live plants per acre prior to the occurrence of an insurable cause of loss.

Planted acreage—Land in which, for each planting period, transplants or seed have been placed manually or by a machine appropriate for the insured crop and planting method, at the correct depth, into soil that has been properly prepared for the planting method and production practice. For each planting period, peppers must initially be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Planting period—The period of time designated in the Actuarial Table in which the peppers must be planted to be considered fall, winter or spring-planted peppers.

Potential production—The number of boxes of mature bell peppers that the pepper plants will or would have produced per acre by the end of the insurance period, assuming normal growing conditions and practices.

Practical to replant—In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period (inability to obtain plants or seed will not be considered when determining if it is practical to replant).

Replanting—Performing the cultural practices necessary to replace the pepper seed or transplants and then replacing the pepper seed or transplants in the insured acreage with the expectation of growing a successful crop.

Row width—The widest distance from the center of one row of plants to the center of an adjacent row of plants.

Tropical depression—A system identified by the U.S. Weather Service as a tropical depression, and for the period of time so designated, including tropical storms, gales, and hurricanes.

Written agreement—A written document that alters designated terms of a policy in accordance with section 15.

2. Unit Division

(a) In addition to the requirement contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit), a basic unit will also be established by planting period.

(b) Unless limited by the Special Provisions, basic units may be further divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement for such further division exists.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year in which the insured crop was planted;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must be located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

3. Amounts of Insurance and Production Stages

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one coverage level (and the corresponding amount of insurance designated in the Actuarial Table for the applicable planting period and practice) for all the peppers in the county insured under this policy.

(b) The amount of insurance you choose for each planting period and practice must have the same percentage relationship to the maximum price offered by us for each planting period and practice. For example, if you choose 100 percent of the maximum amount of insurance for a specific planting period and practice, you must also choose 100 percent of the maximum amount of insurance for all other planting periods and practices.

(c) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) do not apply to fresh market peppers.

(d) The amounts of insurance per acre are progressive by stages as follows:

Stage	Percent of the amount of insurance per acre that you selected	Length of time if direct-seeded	Length of time if transplanted
1	65	From planting through the 74th day after planting	From planting through the 44th day after planting.
2	85	From the 75th day after planting until the beginning of stage 3.	From the 45th day after planting until the beginning of stage 3.
3	100	Begins the earlier of 110 days after planting, or the beginning of harvest.	Begins the earlier of 80 days after planting, or the beginning of harvest.

(e) Any acreage of peppers damaged in the first or second stage to the extent that the majority of producers in the area would not normally further care for it, will be deemed to have been destroyed. The indemnity payable for such acreage will be based on the stage the plants had achieved when the damage occurred.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is April 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are July 31.

6. Report of Acreage

In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report on or before the acreage reporting date contained in the Special Provisions for each planting period:

(a) All the acreage of peppers in the county insured under this policy in which you have a share;

(b) The dates the acreage was planted within each planting period; and

(c) The row width.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 (Annual Premium) of the Basic Provisions (§ 457.8), the annual premium amount for each cultural practice (*e.g.*, fall direct-seeded irrigated) is determined by multiplying the third stage amount of insurance per acre by the premium rate for the cultural practice as established in the Actuarial Table, by the insured acreage, by your share at the time coverage begins, and by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the bell peppers in the county for which a premium rate is provided by the Actuarial Table:

(a) In which you have a share;

(b) That are:

(1) Planted to be harvested and sold as mature fresh market bell peppers;

(2) Planted within the planting periods designated in the Actuarial Table;

(3) Grown under an irrigated practice;

(4) Grown on acreage covered by plastic mulch except where the Special Provisions allow otherwise;

(5) Grown by a person who in at least one of the three previous crop years:

(i) Grew bell peppers for commercial sale; or

(ii) Participated in managing a bell pepper farming operation;

(c) That are not:

(1) Interplanted with another crop;

(2) Planted into an established grass or legume;

(3) Pimento peppers; or

(4) Grown for direct marketing.

9. Insurable Acreage

(a) In lieu of the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching if

a crop has not been planted in at least one of the three previous crop years, we will insure newly cleared land or former pasture land planted to fresh market peppers.

(b) In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(1) You must replant any acreage of peppers damaged during the planting period in which initial planting took place whenever less than 50 percent of the plant stand remains: and

(i) It is practical to replant;

(ii) If, at the time the crop was damaged, the final day of the planting period has not passed; and

(iii) The damage occurs within 30 days of transplanting or 60 days of direct-seeding.

(2) Whenever peppers initially are planted during the fall or winter planting periods and the conditions specified in sections 9(b)(1)(ii) and (iii) are not satisfied, you may elect:

(i) To replant such acreage and collect any replant payment due as specified in section 12. The initial planting period coverage will continue for such replanted acreage.

(ii) Not to replant such acreage and receive an indemnity based on the stage of growth the plants had attained at the time of damage. However, such an election will result in the acreage being uninsurable in the subsequent planting period.

(3) We will not insure any acreage on which peppers (except for replanted peppers in accordance with sections 9(b)(1) and (2)), tomatoes, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting peppers.

10. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of the date we accept your application, or when the peppers are planted in each planting period. Coverage ends at the earliest of:

(a) Total destruction of the peppers on the unit;

(b) Abandonment of the peppers on the unit;

(c) The date harvest should have started on the unit on any acreage which will not be harvested;

(d) Final adjustment of a loss on the unit;

(e) Final harvest; or

(f) The calendar date for the end of the insurance period as follows:

(1) 165 days after the date of direct-seeding or replanting with seed; and

(2) 150 days after the date of transplanting or replanting with transplants.

11. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Excess rain;

(2) Fire;

(3) Freeze;

(4) Hail;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any loss of production due to:

(1) Disease or insect infestation, unless no effective control measure exists for such disease or insect infestation; or

(2) Failure to market the peppers, unless such failure is due to actual physical damage caused by an insured cause of loss that occurs during the insurance period.

12. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if, due to an insured cause of loss, more than 50 percent of the plant stand will not produce peppers and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of your actual cost of replanting or the result obtained by multiplying the per acre replanting payment amount contained in the Special Provisions by your insured share.

(c) In lieu of the provisions contained in section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage planted during each planting period within the crop year.

13. Duties In The Event of Damage or Loss

In addition to the requirements contained in section 14 (Duties In The Event of Damage or Loss) of the Basic Provisions (§ 457.8), if you intend to claim an indemnity on any unit you also must give us notice not later than 72 hours after the earliest of:

(a) The time you discontinue harvest of any acreage on the unit;

(b) The date harvest normally would start if any acreage on the unit will not be harvested; or

(c) The calendar date for the end of the insurance period.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage in each stage by the amount of insurance per acre for the final stage;

(2) Multiplying each result in section 14(b)(1) by the percentage for the applicable stage (see section 3(d));

(3) Total the results of section 14(b)(2);

(4) Subtracting either of the following values from the result of section 14(b)(3):

(i) For other than catastrophic risk protection coverage, the total value of production to be counted (see section 14(c)); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total value of production to be counted (see section 14(c)) by:

(A) Sixty percent for the 1998 crop year; or

(B) Fifty-five percent for 1999 and subsequent crop years; and

(5) Multiplying the result of section 14(b)(4) by your share.

(c) The total value of production to count from all insurable acreage on the unit will include:

(1) Not less than the amount of insurance per acre for the stage for any acreage:

(i) That is abandoned;

(ii) Put to another use without our consent;

(iii) That is damaged solely by uninsured causes; or

(iv) For which you fail to provide acceptable production records;

(2) The value of the following appraised production will not be less than the dollar amount obtained by multiplying the number of boxes of appraised peppers by the minimum value per box shown in the Special Provisions for the planting period:

(i) Potential production on any acreage that has not been harvested the third time;

(ii) Unharvested mature bell peppers (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count);

(iii) Production lost due to uninsured causes; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The total value of all harvested production from the insurable acreage will be the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than the minimum value shown in the Special Provisions for any box of peppers), and multiplying this result by the number of boxes of peppers harvested. Harvested production that is damaged or defective due to insurable causes and is not marketable, will not be counted as production to count.

15. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales

closing date, except as provided in section 15(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, and premium rate;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

16. Minimum Value Option

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect *either* Option I *or* Option II of the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure fresh market peppers under this option, and pay the additional premium indicated in the Actuarial Table for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3), the total value of harvested production will be determined as follows:

(1) If you selected Option I of the Minimum Value Option, the total value of harvested production will be as follows:

(i) For sold production, the dollar amount obtained by subtracting the allowable cost contained in the Special Provisions from the price received for each box of peppers (this result may not be less than the minimum value option price contained in the Special Provisions for any box of peppers), and multiplying this result by the number of boxes of peppers sold; and

(ii) For marketable production that is not sold, the dollar amount obtained by multiplying the number of boxes of such peppers on the unit by the minimum value shown in the Special Provisions for the planting period (harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production).

(2) If you selected Option II of the Minimum Value Option, the total value of harvested production will be as provided in section 16(b)(1), except that the dollar amount specified in section 16(b)(1)(i) may not be less than zero.

(c) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

Signed in Washington, DC, on March 24, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance.

[FR Doc. 97–7941 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–FA–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0968]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is delegating to an individual member the Board's authority to approve extensions of the 180-day period for final Board action on applications to establish certain foreign bank offices in the United States. This delegation of authority is intended to aid in the efficient processing of such foreign bank office applications.

EFFECTIVE DATE: March 22, 1997.

FOR FURTHER INFORMATION CONTACT: Paul A. Vogel, Senior Attorney (202/452–3428), Sara M. Craig, Attorney (202/452–2263), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Dorthea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 7(d) of the International Banking Act of 1978 (IBA), as amended by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. No. 104–208, 110 Stat. 26), permits the Board to extend the 180-day period within which the Board must take final action on an application by a foreign bank to establish a U.S. branch or agency or to acquire ownership or control of a commercial lending company in the United States. The Board may extend this period an additional 180 days after providing notice of, and the reasons for, the extension to the applicant foreign bank and to the State bank supervisor or the Comptroller of the Currency, as appropriate (12 U.S.C. 3105(d)(7)(A)).

The Board has delegated to an individual Board member the authority to approve such extensions pursuant to section 7(d) of the IBA. Section 11(k) of the Federal Reserve Act provides that the Board is authorized and empowered to delegate any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. 12 U.S.C. 248(k). This delegation of authority is consistent with previous Board practices with respect to extensions of time periods mandated by Regulation K.

The provisions of the Administrative Procedure Act (APA)(5 U.S.C. 553) relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The APA grants a specific exemption from its requirements relating to notice and public participation in this instance (12 U.S.C. 553(b)(3)(A)), and good cause exists to find that the nature of this amendment makes a notice and public comment procedure unnecessary.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the rule.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board amends 12 CFR part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.4 is amended by adding paragraph (a)(4) to read as follows:

§ 265.4 Functions delegated to Board members.

(a) * * *

(4) *Extension of time period for final Board action.* To extend for an additional 180 days the 180-day period within which final Board action is required on an application pursuant to section 7(d) of the International Banking Act.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 24, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–7910 Filed 3–27–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–107–AD; Amendment 39–9975; AD 97–07–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. It requires a one-time template inspection of the rear pressure bulkhead to detect dents; repetitive eddy current inspections of dents greater than a certain depth to detect cracking; and repair, if necessary. This amendment is prompted by a report indicating that cracking has been found in the vicinity of a dent in the rear pressure bulkhead of one airplane. The actions specified by this amendment are intended to prevent fatigue cracking resulting from a dent in the rear pressure bulkhead; that condition, if not corrected, could reduce the structural integrity of the bulkhead and, consequently, lead to rapid depressurization of the airplane.

DATES: Effective May 2, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 2, 1997.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on November 5, 1996 (61 FR 56923). That action proposed to require a one-time template inspection of the rear pressure bulkhead to detect dents; repetitive eddy current inspections of dented areas greater than a certain depth to detect fatigue cracking; and repair, if necessary.

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

Support for the Proposal

One commenter supports the proposed AD.

Request to Explain Adequacy of One-Time Inspection

One commenter asks if a one-time inspection, as would be required by the AD, is adequate to address the subject fatigue cracking. The commenter points out that if the inspection finds no dents of a depth greater than 2 mm, no further action would be required; consequently, any subsequent detection of dents/cracking will depend upon the existing level and frequency of inspections in the operators' existing maintenance program, specifically the Maintenance Planning Document (MPD). The commenter questions whether the inspections scheduled under the current MPD are adequate to ensure that any small dents are subsequently found and corrected in a timely manner.

The FAA responds to this comment by reiterating the circumstances relevant to the cracking addressed by this AD action. The subject cracks were detected on the rear pressure bulkhead on one airplane during a heavy maintenance check. The cracks were found to initiate from a dent in the bulkhead. Airbus conducted analyses and calculations of the dent and associated cracking, which demonstrated that:

1. The force necessary to make a dent of this sort in the rear pressure bulkhead in the specific location could not have been generated in service, and

2. The dent was unique to the production process.

The purpose of the one-time inspection required by this AD is to detect dents as small as 2mm in depth in the rear pressure bulkhead that may have occurred during production. To accomplish this, the inspection makes use of a template in accordance with Airbus Service Bulletin A300–53–302, because the inspections conducted under the MPD cannot detect small dents of this type. The inspections that are part of the MPD are visual inspections, and are considered adequate to detect defects of the rear pressure bulkhead that may occur in service.

Conclusion

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

Cost Impact

The FAA estimates that 15 Airbus Model A300 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required inspection for denting, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,500, or $300 per airplane.

If subsequent eddy current inspections to detect cracking are necessary, they would require 46 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections on U.S. operators is estimated to be $2,760 per airplane per inspection.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–07–02 Airbus Industrie: Amendment 39–9975. Docket 96–NM–107–AD.

Applicability: Model A300 airplanes having serial numbers 001 through 0156, inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the rear pressure bulkhead, which could reduce its structural integrity, and consequently lead to rapid depressurization of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a template inspection to detect dents of the rear pressure bulkhead in the area between right hand and left hand radial stiffeners RS 5 and RS 13, in accordance with Airbus Service Bulletin A300–53–302, dated November 3, 1995.

(b) If no dent, or if no dent that is greater than 2 mm in depth, is detected during the template inspection required by paragraph (a) of this AD: No further action is required by this AD.

(c) If any dent that is greater than 2 mm in depth is detected during the template inspection required by paragraph (a) of this AD: Prior to further flight, inspect the dent for cracking, in accordance with Airbus Service Bulletin A300–53–302, dated November 3, 1995.

(1) If no crack is detected: Repeat the inspection for cracking at intervals not to exceed 2,000 landings until the permanent repair specified in paragraph (c)(1)(i) of this AD is accomplished.

(i) Prior to the accumulation of 5 years or 11,000 landings after the effective date of this AD, whichever occurs first, accomplish the permanent repair of the dent in accordance with paragraph 2.B.(3)(c)*1* of the Accomplishment Instructions of the service bulletin.

(ii) Accomplishment of the permanent repair of the dent constitutes terminating action for the repetitive inspection requirements of this paragraph, and thereafter, no further action is required.

(2) If only radial cracking is detected in the circumferential strap and no other cracking is found elsewhere in the rear pressure bulkhead: Prior to further flight, accomplish the circumferential strap repair, in accordance with paragraph 2.B.(3)(c)*2* of the Accomplishment Instructions of the service bulletin. Thereafter, inspect the dent for cracking at intervals not to exceed every 1,000 landings until the permanent repair specified in paragraph (c)(2)(i) of this AD is accomplished.

(i) Prior to the accumulation of 5 years or 11,000 landings after the effective date of this AD, whichever occurs first, accomplish permanent repair of the dent in accordance with the paragraph 2.B.(3)(c)*2* of the Accomplishment Instructions of the service bulletin.

(ii) Accomplishment of the permanent repair of the dent constitutes terminating action for the repetitive inspection and repair requirements of this paragraph and thereafter, no further action is required.

(3) If any other cracking not specified in paragraph (c)(1) or (c)(2) of this AD is detected: Prior to further flight, accomplish a permanent repair of the dent in accordance with the paragraph 2.B.(3)(c) *3* or *4*, as applicable, of the Accomplishment Instructions of the service bulletin; or in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Accomplishment of the permanent repair of the dent in accordance with the Accomplishment Instructions of the service bulletin constitutes terminating action for the requirements of this AD and, thereafter, no further action is required.

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

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

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–53–302, dated November 3, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 2, 1997.

Issued in Renton, Washington, on March 19, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–7517 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–CE–29–AD; Amendment 39–9976; AD 97–07–03]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA31, PA31–300, PA31–325, PA31–350, and PA31P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 81–11–04 that applies to The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes that have Cleveland nose wheel assembly part number (P/N) 40–76B installed. AD 81–11–04 currently requires inspecting the nose wheel flange for cracks. The repetitive inspections terminate by replacing the nose wheel assembly with

Cleveland P/N 40–140, which is an improved design. This action is prompted by the lack of designation of Piper Model PA31P in the Applicability section of AD 81–11–04, and the subsequent failure of a nose wheel assembly on a Piper Model PA31P airplane during taxiing operations. The actions specified by this AD are intended to prevent the failure of the nose wheel, which if not corrected, could result in loss of control of the airplane during taxiing, take-off, or landing operations.

DATES: Effective May 15, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 15, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. 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–29–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: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362, facsimile (404) 305–7348.

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 PA31, PA31–325, PA31–350, and PA31P airplanes that have Cleveland nose wheel assembly part number (P/N) 40–76B installed was published in the **Federal Register** on October 10, 1996 (61 FR 53155). This action would supersede AD 81–11–04 with a new AD that retains the same action as AD 81–11–04 and include Piper Model PA31P airplanes in the applicability. Accomplishment of the proposed action would be in accordance with Piper Service Bulletin (SB) 700A, dated October 12, 1981.

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. One minor editorial correction is a missing model number that is affected by this AD. The FAA inadvertently omitted Model PA31–300 from the applicability listing in the NPRM, however the PA31–300 serial numbers were listed. Piper manufactured Models PA31, PA31–300, and PA31–325 airplanes simultaneously, so the serial number range listed for Models PA31 and PA31–325 airplanes in the NPRM applicability section also included the Model PA31–300 airplanes. The applicability section now contains Model PA31–300 with the appropriate serial numbers. 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.

Cost Impact

The FAA estimates that 1,842 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. The improved parts cost approximately $450 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,160,460 or $630 per airplane. These figures only account for the replacement of the new part and do not take into account the cost for the repetitive inspections that would be incurred prior to installing the improved parts.

Piper has informed the FAA that parts have been distributed to equip 8 airplanes in the United States which will reduce the total figure from $1,160,460 to $1,155,420.

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:

97–07–03 The New Piper Aircraft, Inc.: Amendment 39–9976; Docket No. 96–CE–29–AD, Supersedes AD 81–11–04, Amendment 39–4114.

Applicability: The following Models and serial numbered airplanes equipped with Cleveland part number (P/N) 40–76B (Piper P/N 451 784) nose wheel assembly, certificated in any category.

Models	Serial numbers
PA31, PA31–300, and PA31–325.	31–2 through 31–8112038
PA31–350	31–5001 through 31–8152088
PA31P	31P–3 through 31P–7730012

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after May 22, 1981 (effective date of AD 81–11–04); within the next 100 hours TIS after the effective date of this AD; or upon the accumulation of 2,000 hours TIS on the nose wheel assembly, whichever occurs later, unless already accomplished.

To prevent the failure of the nose wheel, which if not corrected, could result in loss of control of the airplane during taxiing, take-off, or landing operations, accomplish the following:

(a) Inspect the nose wheel assembly, Cleveland part number (P/N) 40–76B (The New Piper Aircraft, Inc. P/N 451 784), for cracks in accordance with the ''Instructions'' section of Piper Aircraft Corporation (Piper) Service Bulletin (SB) 700A, dated October 12, 1981.

(1) If cracked, prior to further flight, replace Cleveland P/N 40–76B (Piper P/N 451 784) with a new Cleveland P/N 40–76B (Piper P/N 451 784) nose wheel assembly. Upon the accumulation of 2,000 hours TIS, reinspect at 100 hour intervals or at each tire change, whichever occurs first; or,

(2) As an alternative to paragraph (a)(1), if cracked, replace Cleveland P/N 40–76B (Piper P/N 451 784) with a serviceable Cleveland P/N 40–140 (Piper P/N 551 791) nose wheel assembly of improved design in accordance with the ''Instructions'' section of Piper SB 700A, dated October 12, 1981.

(3) If no cracks are found and Cleveland P/N 40–140 (Piper P/N 551–791) is not installed, repetitively inspect at intervals not to exceed 100 hours TIS or at each tire change, whichever occurs first.

(b) The installation of Cleveland P/N 40–140 (Piper P/N 551 791) is considered terminating action for the inspection requirements of paragraph (a) and (a)(3) of this AD.

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Ave., suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(e) The inspections and replacement required by this AD shall be done in accordance with Piper Aircraft Corporation Service Bulletin No. 700A, dated October 12, 1981. 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 The New Piper Aircraft, Inc., Attn.: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. 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.

(f) This amendment (39–9976) becomes effective on May 15, 1997.

Issued in Kansas City, Missouri, on March 20, 1997.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–7680 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 96–AAL–27]

Revision of Class E Airspace; Nuiqsut, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This action revises Class E airspace at Nuiqsut Airport, AK. The modifications to the Global Positioning System (GPS) instrument approaches to runway (RWY) 4 and RWY 22 at Nuiqsut, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Nuiqsut Airport, AK.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Nuiqsut was published in the **Federal Register** (62 FR 3631). The modifications to the GPS instrument approach procedures to RWY 4 and RWY 22 at Nuiqsut Airport, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations 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) revises Class E airspace located at Nuiqsut, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Nuiqsut, AK [Revised]

Nuiqsut Airport, AK
(Lat. 70°12′36″ N, long. 151°00′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nuiqsut Airport, and that airspace extending upward from 1,200 feet above the surface 5 miles north and 8 miles south of the 249° bearing from the airport to 29 miles southwest.

* * * * *

Issued in Anchorage, AK, on March 21, 1997.

Willis C. Nelson

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–7919 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–26]

Establishment of Class E Airspace; Kake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kake Airport, AK. The development of non-directional beacon (NDB) and Global Positioning System (GPS) instrument approaches to runway (RWY) 10 at Kake, AK, have made this action necessary. The airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The intended effect of this action is to provide adequate controlled airspace for IFR operations at Kake Airport, AK.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Kake was published in the **Federal Register** (62 FR 3632). The development of NDB and GPS instrument approach procedures to RWY 10 at Kake Airport, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations 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 located at Kake, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures. The status of Kake Airport will change from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kake, AK [New]

Kake Airport
(Lat. 56° 57′41″ N; long. 133° 54′ 37″ W)
Kake NDB/DME
(Lat. 56° 57′50″ N; long. 133° 54′ 43″ W)
Sumner Strait NDB
(Lat. 56° 27′53″ N; long. 133° 05′ 50″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Kake Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 9 miles south of the 286° bearing from the Kake NDB/DME extending from the NDB/DME to 22 miles west of the airport and within 4 miles each side of the 138° bearing from the Kake NDB/DME extending from the 6.5-mile radius to Sumner Strait NDB.

* * * * *

Issued in Anchorage, AK, on March 21, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–7918 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–28]

Revision of Class E Airspace; Selawik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Selawik Airport, AK. The development of a Global Positioning System (GPS) instrument approach to runway (RWY) 27 and recomputation of the Airport Reference Point (ARP) at Selawik, AK, have made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Selawik Airport, AK.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Selawik was published in the **Federal Register** (62 FR 3630). The development of the GPS instrument approach procedure to RWY 27 and recomputation of the Airport Reference Point (ARP) at Selawik Airport, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations 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) revises Class E airspace located at Selawik, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Selawik, AK [Revised]

Selawik Airport, AK
(Lat. 66°35′58″ N, long. 159°59′49″ W)
Selawik VOR/DME, AK
(Lat. 66°36′00″ N, long. 159°59′30″ W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of the Selawik Airport; and that airspace extending upward from 1,200 feet above the surface within 6 miles north and 4 miles south of the 231° radial of the Selawik VOR/DME extending from the 8-mile radius to 16 miles southwest, and 6 miles north of the 058° radial extending from the 8-mile radius to 16 miles northeast, and 10 miles either side of the Selawik VOR/DME 120° radial to 50 miles southeast.

* * * * *

Issued in Anchorage, AK, on March 21, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–7920 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 96–AAL–29]

Establishment of Class E Airspace; Atqasuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Atqasuk Airport, AK. The development of Global Positioning System (GPS) instrument approaches to runway (RWY) 6 and RWY 24 at Atqasuk, AK, have made this action necessary. The airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Atqasuk Airport, AK.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, System Management Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number: (907) 271–5863; email: Robert.van.Haastert@faa.dot.gov.

SUPPLEMENTARY INFORMATION:

History

On January 24, 1997, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Atqasuk was published in the **Federal Register** (62 FR 3629). The development of GPS instrument approach procedures to RWY 6 and RWY 24 at Atqasuk Airport, AK, have made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposals were received, thus the rule is adopted as written.

The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9D, Airspace Designations and Reporting Points,

dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations 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 located at Atqasuk, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures. The status of Atqasuk Airport will change from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Atqasuk, AK [New]

Atqasuk Airport, AK
(Lat. 70°28′02″ N, long. 157°26′ 08″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Atqasuk Airport.

* * * * *

Issued in Anchorage, AK, on March 21, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97–7921 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket Number: 950427120–7006–02]

RIN 0648–AH99

Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; final rule and summary of final management plan implementing the Sanctuary designation.

SUMMARY: NOAA, as required by section 2306 of the Hawaiian Islands National Marine Sanctuary Act (the HINMSA or Act), has developed a comprehensive final management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the HIHWNMS or Sanctuary). The Sanctuary was designated by Congress in 1992. This document publishes the final Designation Document and final regulations for the Sanctuary, and summarizes the final management plan. The management plan details the goals and objectives, management responsibilities, research and long-term monitoring activities, and interpretive, educational, and resource protection programs for the Sanctuary. The regulations implement the final management plan and govern the conduct of activities consistent with the HINMSA, the National Marine Sanctuaries Act (NMSA), and the Designation Document for the Sanctuary.

The primary purposes of the Designation Document, final regulations and final management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

EFFECTIVE DATES: Congress and the Governor of the State of Hawaii have forty-five days of continuous session of Congress beginning on the day on which this notice is published to review the management plan and regulations before they take effect. After forty-five days, the management plan and regulations automatically become final and take effect, unless the Governor of the State of Hawaii certifies within the forty-five-day period to the Secretary of Commerce that the management plan, regulations, or term thereof is unacceptable. In such case, the management plan, regulation or term cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii. If the Secretary considers that any certification of unacceptability by the Governor will affect the Sanctuary in such a manner that the policy or purposes of the HINMSA cannot be fulfilled, the Secretary may terminate the entire Sanctuary designation. At least 30 days before that termination, the Secretary must submit written notice of the termination to the House Committee on Resources and Senate Committee on Commerce, Science, and Transportation.

A document announcing the effective date of these regulations will be published in the **Federal Register**.

ADDRESSES: The Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared to implement the Sanctuary designation was released on February 18, 1997. Copies of the FEIS/MP are available on request to the Hawaiian Islands Humpback Whale National Marine Sanctuary Office, 726 South Kihei Road, Kihei, Maui, Hawaii 96753; or the Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC–4, 12th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Debra Malek, Regional Manager, Pacific Branch, Sanctuaries and Reserves Division, Silver Spring, Maryland, (301) 713–3141, or Allen Tom, On-site Project Specialist, Kihei, Maui, Hawaii, (808) 879–2818 (Maui), (808) 541–3184 (Oahu) or (800) 831–4888 (inter-island toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

The establishment of a national marine sanctuary in the waters around Hawaii was first considered in 1977, when NOAA received the nomination for a final Humpback Whale National Marine Sanctuary in the waters between the islands of Maui, Molokai, Lanai, and Kahoolawe. Scientists and resource managers, at a workshop convened in December 1977, recommended that a marine sanctuary would be most beneficial for the long-term protection of the endangered humpback whale. Workshop participants concluded that a Sanctuary that encompassed the marine waters around the main Hawaiian islands would provide the greatest protection for humpback whales in the waters off Hawaii. The nomination was placed on NOAA's List of Recommended Areas in October 1979. In accordance with NOAA regulations, NOAA declared the site an ''active candidate'' for sanctuary designation in March 1982, and public workshops were conducted in Hawaii during April 1982. Both support for a sanctuary and concerns regarding possible regulation of fishing activities and vessel operation were voiced at these meetings. In early 1984, at the request of the State government, NOAA suspended further consideration of the site as a possible national marine sanctuary.

In October 1990, Congress directed NOAA to determine the feasibility of establishing a national marine sanctuary around Kahoolawe Island, the smallest of the eight main Hawaiian islands (Pub. L. 101–515). NOAA's 1992 report to Congress, ''Kahoolawe Island National Marine Sanctuary Feasibility Study'', found that although it did not appear that large numbers of humpback whales utilize Kahoolawe Island waters, other biological, cultural and historical resources adjacent to Kahoolawe Island merited further investigation as to their possible national significance. The study recommended that additional areas around the Hawaiian Islands be considered as possible components of a multiple-site, multiple-resource national marine sanctuary. In 1992, Congress considered the reauthorization of Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (MPRSA; also cited as the National Marine Sanctuaries Act). During this time, the State of Hawaii presented testimony at reauthorization hearings citing the need and desirability of designating a Humpback Whale National Marine Sanctuary in the waters around Hawaii. Coupled with the Kahoolawe Feasibility Study, the State's testimony renewed Congressional interest in designation of a national marine sanctuary in Hawaii.

On November 4, 1992, Public Law 102–587 (the Oceans Act), was signed into law. Subtitle A of Title II of the Oceans Act (the National Marine Sanctuaries Program Amendments Act) reauthorized and amended Title III of the MPRSA. Subtitle C of Title II of the Oceans Act, titled the Hawaiian Islands National Marine Sanctuary Act (Act), designated the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Act specified a boundary for the Sanctuary subject to modification by the Secretary of Commerce (Secretary) as necessary to fulfill the purposes for which the Sanctuary was designated, and identified waters around Kahoolawe Island for automatic designation as part of the Sanctuary on January 1, 1996, unless certified by the Secretary as being unsuitable for inclusion in the Sanctuary. The Secretary made such a certification of unsuitability in December 1995, due to the presence of unexploded ordnance in the waters around Kahoolawe and to await the development of the Kahoolawe Island Reserve Commission's (KIRC's) Ocean Management Plan. The HINMSA was amended in 1996 to eliminate the annual finding of suitability by the Secretary, and instead provided a process by which the KIRC could request for the inclusion of the marine waters within three miles of Kahoolawe in the Sanctuary.

Section 2306 of the Act requires the Secretary to develop a comprehensive management plan and implementing regulations following the procedures of sections 303 and 304 of the NMSA (16 U.S.C. 1433 and 1434; these sections set forth designation standards and procedures for designating and implementing the designation of national marine sanctuaries). To meet these requirements, a series of scoping meetings was conducted in March 1993 on each of the main Hawaiian Islands, and in Washington, D.C. During March 1994, additional public meetings were conducted on each of the main Hawaiian Islands to aid the development of a draft management plan for the Sanctuary. On-site staff also solicited information from Federal, State and county agencies and the public to assist in the development of a draft management plan and proposed implementing regulations. A draft environmental impact statement/management plan (DEIS/MP) and proposed implementing regulations were developed by SRD in partnership with the Hawaii Office of State Planning (now the Office of Planning) pursuant to a memorandum of agreement signed in June 1993. The DEIS/MP and proposed implementing regulations (60 FR 48000, September 15, 1995) were published on September 15, 1995, initiating a 90-day public comment period that ended on December 15, 1995. Over 25 statewide informational meetings were held to assist the public in understanding SRD's preferred alternatives in the DEIS/MP and to answer questions and concerns. SRD also held seven public hearings throughout the main Hawaiian Islands to formally receive comments on the DEIS/MP and proposed implementing regulations. In total, over 250 written and oral comments were received by NOAA during the public comment period.

Issues and concerns raised in the public comments included: Sanctuary boundaries; the waters around Kahoolawe; regulations; fishing; enforcement; management/scope; the Sanctuary Advisory Council (SAC); research; education; native Hawaiians; user fees; funding for the program; socio-economic impacts; need for the Sanctuary; the manner in which the Sanctuary was designated; and Federal presence in State waters. A summary of the significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. Comments are presented and responded to in greater detail in appendix A of the FEIS/MP.

II. Response to Comments

Boundary

Comment: All boundary alternatives should exempt commercial harbors from the Sanctuary and allow for further expansion of existing harbors. Harbor exemptions should also include approaches and off-shore anchorages.

Response: The Sanctuary boundary excludes major ports, harbors, and small boat basins primarily because they do not constitute humpback whale habitat. Whales tend to avoid such areas because of the number and types of activities that occur within such ports, harbors, and small boat basins (both in and out of the water). Such activities include, but are not limited to, vessel painting,

shore-based boat cleaning, toxic paint releases from moored vessels, and sewage disposal. NOAA has determined that the nature and level of these activities are not appropriate for inclusion within the Sanctuary. By excluding these areas, NOAA will be able to focus Sanctuary management on the long-term protection of other areas that do constitute humpback whale habitat and are less heavily impacted by human activity. The list of excluded ports, harbors and small boat basins can be found at section 945.2 of these regulations. These final regulations add the Ala Wai small boat basin on Oahu to the list of excluded areas. While the Sanctuary regulations do not prohibit the construction of new harbors or the expansion of existing harbors conducted in compliance with a valid Federal or State permit, plans for such development within the Sanctuary will be reviewed by NOAA in order to offer recommendations and comments to ensure that Sanctuary resources are adequately protected. At that time, NOAA will determine whether to revise the Sanctuary boundary to exclude the new or expanded port, harbor or boat basin. Approaches to harbors and offshore anchorages are not excluded from the Sanctuary boundary because these areas are more frequently used by humpback whales and provide an important link between the nearshore and deeper water habitats.

Comment: NOAA should only include those areas on leeward sides of the islands in the Sanctuary boundary since that is where the whales seem to be located.

Response: NOAA disagrees. Humpback whale distribution studies over the last ten years have shown that humpbacks are commonly found in waters less than 100-fathoms throughout the main Hawaiian Islands (windward and leeward). Though distribution studies have shown that humpbacks can be found in greater numbers in leeward areas, they still use windward areas for breeding, calving, and nursing activities. At present, scientists do not fully understand distribution patterns and habitat preference for humpbacks, though it is accurate to say that humpback whales are distributed throughout the main Hawaiian Islands, particularly in waters less than 100-fathoms. Given that humpback whales are very dynamic and swim among the different islands, NOAA has determined that the boundary should include windward and leeward sides of the islands.

Comment: NOAA should adopt a Sanctuary boundary that includes waters around all the main Hawaiian Islands from the shoreline to the 1000-fathom isobath to better encompass all the whales' habitat.

Response: NOAA recognizes that this boundary alternative would include most if not all the humpback whale habitat in the main Hawaiian Islands, but has concluded that this alternative is far too large for effective management under current and foreseeable financial and staff resources. Most of the area in this boundary alternative is located significantly offshore (e.g., up to 40 miles from each main Hawaiian Island). The dispersion of management activities (e.g., research, enforcement) in these areas would strain the program's ability to effectively manage other nearshore areas of the Sanctuary. Since most human and whale activities and interactions occur in relatively shallow waters (generally less than 100-fathoms), NOAA believes the focus of Sanctuary management efforts would be better placed in these areas. This alternative also fails to consider the importance of U.S. Department of Defense (DOD) military use areas in Hawaii that are essential to national security and defense.

Comment: NOAA should adopt a zoned boundary; an outer boundary around the 1000-fathom isobath (no regulations—advisory only) and an inner boundary constituting the Congressionally-designated boundary.

Response: NOAA disagrees. Although this option would incorporate most humpback whale habitat in the Sanctuary, NOAA believes that such a boundary is too large to effectively manage (see previous response). NOAA believes that a 100-fathom isobath boundary is more manageable since research, education, and other resource protection measures can be focused in those nearshore areas where whales and human activities are more likely to come into conflict. This core 100-fathom boundary is included as the NOAA preferred boundary alternative, excluding DOD military use areas that are essential to national security and defense.

Comment: The shoreline does not need to constitute the Sanctuary's border since whales do not go that close to shore.

Response: The shoreline was chosen as the Sanctuary's inshore boundary because the purpose of the Sanctuary is to protect the humpback whale and its habitat. Humpback whales use the shallow, nearshore areas (less than 100-fathom isobath) around the main Hawaiian Islands for certain reproductive activities (i.e., calving and nursing). The bathymetry around the Hawaiian Islands is variable, with some adjacent marine areas dropping off steeply very close to shore and, therefore, whales may be found in these areas. Further, impacts to the nearshore waters of humpback whale habitat could impact waters further offshore as well, where whales are also found. The shoreline is also more easily recognized as a definable, uniform inshore boundary than are offshore areas. Finally, a boundary that includes the shoreline also provides more protection for stranded whales or whale carcasses that wash up on shore.

Comment: Define what makes a boundary manageable versus non-manageable. The Statewide boundary is too large for NOAA to effectively manage.

Response: The National Marine Sanctuary Program has 12 different sites, each encompassing unique resources in a defined geographic area. Their sizes range from 0.25 square miles to over 5,000 square miles. Manageability must be looked at on a site-by-site basis taking into account area's size and resources, existing management authorities, accessibility to the site, types and impacts of human uses, suitability for research, monitoring and enforcement activities, and fiscal and staffing resources of the National Marine Sanctuary Program. In selecting a sanctuary boundary, NOAA assesses whether the boundary will facilitate the goals for which the sanctuary was designated and whether it is manageable given resource and practical limitations. NOAA has determined that it can successfully supplement and help coordinate research, long-term monitoring, education, and enforcement programs within a statewide Sanctuary boundary (with certain exceptions) encompassing the waters from the shoreline to the 100-fathom isobath.

Comment: NOAA should adopt the Congressionally designated boundary (Maui County and part of Kauai).

Response: Although Maui County has historically had and continues to have the highest reported concentration of humpback whales, other areas of the State (i.e., Kauai, Oahu, and the Big Island) include important whale habitat used for breeding, calving, and nursing activities. Many different scientific research studies have concluded that humpback whales are primarily distributed within the 100-fathom isobath throughout the main Hawaii Islands, including Kauai, Oahu, and the Big Island. NOAA believes that a statewide boundary is necessary to provide comprehensive and coordinated management of humpback whales throughout Hawaii, and that the benefits associated with a national marine

sanctuary, including research and educational efforts, and enhanced enforcement of existing laws, should be available to all the islands of the State.

Comment: The expansion of the Sanctuary beyond Maui County is not justified, especially in light of the fact that the military exclusion zones contain high reported concentrations of humpback whales (West Kauai, Oahu). Military areas should not be excluded from the boundary since activities occurring in these areas can impact the whales.

Response: In choosing a boundary for a sanctuary, NOAA must take into consideration many factors, including a area's size, resources, manageability, and the human uses of the area (see earlier response). The Department of Defense (DOD) is a significant ocean user in Hawaii, and many of its activities are essential to our nation's security and defense. NOAA has formally consulted with DOD on their existing military activities and has concluded that they have sufficient resource protection measures within their standard operating procedures to ensure the protection of humpback whales and their habitat. DOD activities remain subject to the provisions of the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and other laws and regulations relating to water quality. To facilitate DOD military uses, NOAA, in consultation with the State of Hawaii and DOD, determined that the Hawaii Sanctuary boundary should not include certain military use areas in order to support the military's interests and activities now as well as into the future, and to maintain our nation's national security interests.

Comment: NOAA should expand the boundary of the Sanctuary to include waters surrounding the entire State, including the Northwest Hawaiian Islands (NWHI).

Response: NOAA agrees that the boundary of the Sanctuary should be expanded beyond the Congressionally-designated boundary (i.e., Maui County). However, NOAA does not believe that the NWHI should be included within the Sanctuary boundary for a variety of reasons. First, few humpback whales have been reported around the atolls, islands, banks, and reefs of the NWHI. Second, this area is managed as a national wildlife refuge, significantly restricting access to the area, even for research purposes. Finally, the inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts from other parts of the main Hawaiian Islands.

Comment: NOAA should expand the boundary of the Sanctuary to include areas of humpback whale habitat throughout the U.S. Exclusive Economic Zone (EEZ).

Response: NOAA does not believe that a Sanctuary encompassing all of the EEZ around Hawaii is necessary or manageable. Most humpback whales can be found within the 100-fathom isobath around the main Hawaiian Islands. An EEZ-sized Sanctuary would expand the Sanctuary to areas that are very remote—hundreds of miles from human population centers. As a result, comprehensive management, including additional research, long-term monitoring, and enforcement demands would significantly strain financial resources and curtail effective management efforts in other areas of the State where both whales and humans are more likely to interact. Regulatory protection offered by the MMPA and the ESA, however, still protects the humpback whale throughout the EEZ around Hawaii.

Comment: NOAA should adopt a boundary that encompasses areas of highest reported concentrations of humpback whales so that the Sanctuary does not include areas where whales are not typically present.

Response: Although this boundary encompasses a series of discrete areas known to be extensively used by humpback whales, it fails to include other important identified areas of the main Hawaiian Islands that humpback whales utilize for transit, courting/mating, breeding, calving, and resting activities. In addition, this boundary does not consider the fact that an increasing whale population will eventually require more space to successfully reproduce, calve, and nurse, and it does not allow for the adequate comprehensive protection of humpback whales and their habitat throughout the Hawaiian range. Finally, this boundary fails to recognize the importance of DOD military use areas and activities that are essential to national security and defense.

Comment: NOAA should adopt as a boundary for the Sanctuary the 100-fathom isobath surrounding all the main Hawaiian Islands including Kaula Rock.

Response: While this boundary accurately reflects the current understanding of humpback whale distribution and habitat use in Hawaii, it fails to recognize the significance of DOD military use areas and activities that are essential to national security and defense. Furthermore, this boundary is slightly larger in scope than the NOAA preferred boundary, as it includes marine waters surrounding Niihau and Kaula Rock. The inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts from other parts of the main Hawaiian Islands.

Comment: NOAA should exclude the Big Island from the Sanctuary's boundary because there are not as many whales around the island as in other parts of the State, and the Big Island residents do not want the Sanctuary there.

Response: NOAA has received oral and written comments both in opposition to and in support of the inclusion of the Big Island within the boundary of the Sanctuary. NOAA believes that the waters around the Big Island constitute important habitat for the humpback whale. Research has shown that the northwest portion of the Big Island contains high concentrations of whales. The whales are also known to use other areas around the Big Island for reproduction, calving, and nursing activities as well. NOAA believes that inclusion of the Big Island will help ensure that comprehensive management and protection of humpback whales and their Hawaiian habitat will be applied statewide. NOAA does not believe that the inclusion of the Big Island will result in significant adverse socio-economic impacts on marine users, and that the benefits associated with a national marine sanctuary (including research and educational efforts, and enhanced enforcement of existing laws) would be distributed throughout the main Hawaiian Islands.

Comment: NOAA should include the Big Island in the Sanctuary boundary.

Response: NOAA agrees and the Big Island has been included in the boundary with the exception of harbors, ports and small boat basins (see previous response).

Kahoolawe

Comment: The waters around Kahoolawe could be added to the Sanctuary without the opportunity for public comment. This would be a violation of the NMSA.

Response: The public has had at least two formal opportunities (March 1993 scoping meetings and September–December 1995 public hearings and comment period on the DEIS/MP) to comment on the inclusion of the waters around Kahoolawe in the Sanctuary. In December, 1995, the Secretary of Commerce certified that the waters around Kahoolawe are unsuitable for inclusion in the Sanctuary and,

therefore they are not part of the Sanctuary boundary. In 1996, the HINMSA was amended, in part to provide that should NOAA determine in the future that Kahoolawe waters may be suitable for inclusion in the Sanctuary, NOAA will prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion. This process will include the opportunity for public comment. Further, the Governor would have the opportunity to certify his or her objection to the inclusion, or any term of that inclusion, and if this occurs, the inclusion or term will not take effect. NOAA is committed to providing additional opportunities for public input, and will also seek recommendations and advice from the SAC. In addition, NOAA will work closely with the KIRC and the State concerning the inclusion of Kahoolawe waters in the Sanctuary.

Regulations

Existing Regulations

Comment: Humpback whales are already protected by the MMPA, the ESA, and State regulations. There is no need for additional regulatory protection.

Response: In 1992, Congress enacted the HINMSA, recognizing the important role that the Hawaiian Islands play in the preservation and long-term vitality of the endangered humpback whale. The waters around the Hawaiian Islands constitute essential breeding, calving, and nursing areas for this important national resource, and are subject to damage and to loss of their ecological integrity from a variety of disturbances.

The HINMSA directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary in consultation with appropriate Federal, State, and local government authorities, as well as other interested persons (i.e., marine users and the general public). The purpose of the Sanctuary designation is to promote the comprehensive and coordinated protection of the humpback whale and its habitat, which NOAA has determined can be achieved through research, monitoring, education, and better enforcement of existing regulations.

NOAA reviewed the scientific literature concerning potential impacts to humpback whales and the existing Federal and State regulations and programs designed to protect humpback whales and their habitat, and concluded that no additional independent regulatory prohibitions or restrictions are needed for their protection at this time. NOAA believes that other coordinating and non-regulatory protection measures are needed, however, to ensure the long-term recovery and vitality of humpback whales and their habitat. While direct regulation is certainly one means of providing protection for resources, NOAA believes that education, research, monitoring, coordination, and better enforcement of existing laws are also necessary to ensure comprehensive protection for humpback whales and their habitat.

NOAA has found that there are adequate existing regulations in place to provide protection of humpback whales and their habitat in Hawaii at this time. However, NOAA, in consultation with other Federal and State agencies, resource managers and researchers, has determined that enforcement of existing authorities needs to be supplemented to provide for greater, coordinated and comprehensive protection of humpback whales and their habitat. Supplementation will be accomplished by incorporating certain existing restrictions as Sanctuary regulations. Such action will enable the Sanctuary to bring the humpback whale perspective to the application of these existing authorities, and to allow for enforcement mechanisms and, when appropriate, civil penalties to be brought under the NMSA for violations of such authorities.

NOAA also recognizes that existing authorities do not provide the necessary resources for agencies to develop comprehensive and coordinated education, research, monitoring, and enforcement programs to ensure the continued viability of humpback whales and their habitat. Nor do these laws provide the degree of public input into managing these resources as does the NMSA. NOAA has therefore determined that there is a need to supplement these other non-regulatory resource protection management tools, and that the Hawaii Sanctuary can play an integral role in facilitating dialogue and in coordinating with the other Federal, State, and county agencies, and the general public. The Sanctuary Management Plan provides a comprehensive and coordinated regime, that complements existing efforts, to protect, manage, and conserve humpback whales and their habitat in Hawaiian waters so they may be enjoyed by both present and future generations.

Comment: How will the Sanctuary provide more protection for the whales given that they are already protected by existing regulations?

Response: NOAA believes that ''protection'' encompasses more than regulatory measures. Education, research, monitoring, coordination, and enforcement all contribute to protecting Sanctuary resources. In response to public and agency comments, NOAA is not issuing new, independent Sanctuary prohibitions or restrictions in Hawaii to protect humpback whales and their habitat. Instead, NOAA will essentially incorporate existing regulations to make up the regulatory portion of the Sanctuary management regime (see previous comment). This will increase protection for humpback whales and their habitat in several ways. First, this gives authority for the Hawaii Sanctuary to be a resource management agency that actually ''sits at the table'' and reviews permit applications for potential harm to Sanctuary resources. The Hawaii Sanctuary has a different and much more focused mission than any of the other agencies in Hawaii inasmuch as its primary concern is to ensure that humpback whales and their habitat are not adversely impacted. Since the Sanctuary is relying on existing regulations, the Sanctuary will not issue independent permits, but will work within the existing permit structures of agencies to ensure that potential impacts to whales are addressed. Memoranda of Understanding (MOUs) with such agencies will detail how the Sanctuary will coordinate in reviewing permit applications.

Second, Sanctuary regulations also provide the necessary authority for the Sanctuary to directly work with Federal and State enforcement agencies to coordinate enforcement of permit violations. Although there are several different Federal and State enforcement entities, all are facing severe financial resource limitations. The Sanctuary can supplement these limited resources and enhance education and outreach efforts to ensure that the public is informed about existing regulations.

Finally, the regulations may provide an added deterrence to potential violators in that the Sanctuary program has a $100,000 potential maximum civil penalty for persons violating Sanctuary regulations (whale approach and harassment, discharges, and alteration of the seabed). All Sanctuary fines assessed as a result of Sanctuary enforcement actions will, however, be based on a civil penalty schedule developed for the Sanctuary that will be made publicly available.

Non-regulatory features of the Sanctuary that will provide greater protection for humpback whales and their habitat include: the SAC, which

can provide a framework for continuous dialogue between the Sanctuary Manager and resource managers, researchers, educators, enforcement agencies, marine users, and the public; research used to address management-related issues and to answer unknown questions such as how and why whales change their behavior in response to various human disturbances; and proactive efforts to work with existing organizations and marine user groups to produce and disseminate information about how humans can minimize their impacts on humpback whales and their habitat and on the existing laws that protect Sanctuary resources.

Comment: Although Sanctuary program staff have stated that there will be no ''new'' Sanctuary regulations, doesn't the fact that the Sanctuary is incorporating existing regulations as part of its regulatory structure constitute new regulations? How is this different than the status quo in terms of permits, veto authority over projects, and enforcement?

Response: NOAA is essentially incorporating certain existing Federal and State regulations that protect (directly and indirectly) humpback whales and their habitat into the Sanctuary management regime as Sanctuary regulations. However, the regulations do not impose any new restrictions inasmuch as the regulations only impose the substantive restrictions which were already in place before the designation of the Sanctuary. They do not place any additional prohibitions or restrictions on marine users aside from those that already exist. Nor do the Sanctuary regulations provide authority to require and issue Sanctuary permits. The Sanctuary is developing MOUs with appropriate Federal and State agencies to facilitate the review by the Sanctuary of other agency permit applications for activities that could impact Sanctuary resources, and, if necessary, provide recommendations to the agency considering issuing a permit on ways to prevent, minimize, or mitigate harm to these resources. These would be recommendations only, and the permitting agency ultimately determines whether to include the recommendations as part of its permit conditions. The Sanctuary regulations do not provide the authority for NOAA to veto, deny, or approve permits issued or authorized by these other agencies. The only ''new'' feature of these regulations would be that if an activity is conducted without a required permit, or in violation of the terms and conditions of an existing permit, such action would be a violation of the Sanctuary regulations. The Sanctuary would then coordinate with the appropriate Federal or State agency on any necessary enforcement actions. This regime is consistent with the input NOAA received throughout the public process from Federal and State agencies, resource managers, researchers and others regarding the adequacy of existing regulations as they pertain to protection of humpback whales and their habitat in Hawaii.

Comment: The current humpback whale approach regulations are flawed. The Sanctuary should create a ''right of safe passage'' or show some ''intent to harass'' so that as the humpback whale populations continue to increase and vessel-whale interaction becomes more common, vessel operators will still be allowed to transit an area without fear of being cited for a violation of an approach regulation.

Response: In 1987, the National Marine Fisheries Service (NMFS) published an interim rule under the ESA (52 FR 44912) establishing a 100-yard approach limit for vessels (or people), a 300-yard vessel approach limit in cow/calf areas, and a 1000-foot overflight limit to provide better protection for humpback whales and to minimize the effects of increasing vessel traffic on humpback whales. A final rule was published by NMFS in January 1995 (60 FR 3775) that retained the 100-yard vessel approach limits and 1000-foot overflight limit, but eliminated the 300-yard cow-calf areas.

NOAA recognizes a difference between approach and proximity to humpback whales, and that whales may approach vessels. The 100-yard approach regulation clearly states that approaching (moving toward) a humpback whale within the prescribed limits is prohibited. A vessel would not ordinarily violate the regulation by inadvertently being inside the 100-yard limit, or if a humpback whale surfaces or approaches within 100 yards of a vessel. NMFS Enforcement agents and the NOAA Office of General Counsel (GC) assess alleged violations on a case by case basis to determine whether an approach has occurred, and whether an enforcement action is warranted. The existing approach regulations appear to have successfully achieved protection for the whale while avoiding enforcement actions for merely being within 100 yards of a whale.

The National Marine Sanctuary Program is incorporating the NMFS approach prohibitions into the Sanctuary management regime. The Sanctuary program cannot independently make changes to regulations promulgated under other authorities (MMPA, ESA, or any other Federal or State regulation). The Sanctuary program, however, recognizes the concerns of the boating community over the enforcement of these regulations and the potential conflict due to increases in both the whale populations and in boating activities in Hawaii. The Hawaii Sanctuary will help coordinate and facilitate dialogue between concerned boaters and NMFS (Office of Protected Species and Office of Enforcement) and NOAA–GC. In addition, the Sanctuary Management Plan will undergo a formal evaluation after five years, including a determination of the effectiveness of the Sanctuary regulations at protecting Sanctuary resources, and their impacts on marine users.

Comment: The Sanctuary should, in cooperation with boat operators, promote proper disposal of sewage from boat heads, encourage compliance with existing laws, and help implement existing regulations and programs.

Response: NOAA agrees. Water quality is one component of the humpback whale habitat that many people want to see improved and maintained. The Sanctuary can use the expertise available on the SAC and associated working groups to work with the boating community and operators to develop voluntary education programs aimed at achieving proper vessel sewage disposal and compliance with existing regulations. The Sanctuary is also supplementing existing regulations that pertain to discharges or deposits that could affect humpback whales or their habitat by making illegal discharges or deposits a Sanctuary violation.

Future Regulations

Comment: The Sanctuary has not provided a guarantee that there will be no new Sanctuary regulations in the future.

Response: NOAA cannot make the guarantee that future regulations will never be necessary. It is possible that someday resource managers may identify a specific type of activity that could negatively impact Sanctuary resources or create conflicts among other Sanctuary users. While other non-regulatory options would be pursued first, regulation is one type of management tool that NOAA may choose to consider in order to protect Sanctuary resources or minimize user conflict. NOAA could not issue a new regulation, however, without first going through an extensive public review and comment process (see following response). The Governor would also have the opportunity to object to any new Sanctuary regulation as it pertains to State waters.

Comment: Should new regulations be necessary in the future, what is the process?

Response: NOAA must first identify and support that there is a need for a new regulation (e.g., that a Sanctuary resource is being, or could be negatively affected by some activity or that an activity is creating a conflict among Sanctuary users). NOAA would work with other Federal and State resource management agencies, the research community and affected user groups to collect all relevant and available information and scientific data that will be used to more clearly define the problem and identify potential solutions. NOAA will also seek advice and recommendations from the SAC and other resource management agencies prior to initiating any rulemaking.

If after coordinating with existing agencies and the SAC a decision is made to propose a new regulation, NOAA is required to, at a minimum, follow the procedures of the Administrative Procedure Act, requiring that adequate public notice and opportunity for public comment be given for any new regulation. Further, if NOAA proposed a regulation outside of the scope of regulations listed in the Sanctuary Designation Document, NOAA would be legally required to follow the procedures of the designation process, including public review and comment, at least one public hearing, preparation of a Supplemental EIS, and gubernatorial review and non-objection. If the Governor objects, the regulation would not take effect in State waters. Finally, if NOAA proposed to substantively amend an existing regulation, NOAA must provide for public review and comment and, although not legally required to do so, has agreed that if the Governor objects the amendment would not take effect in State waters.

Comment: There should be no new regulations unless:

(i) The need for a new regulation is clearly demonstrated;

(ii) the disturbance results in loss of humpback whale life;

(iii) the negative impacts of the activity have been documented and substantiated by legitimate research; and

(iv) regulations are first approved unanimously by the SAC.

Response: NOAA agrees that there should not be any new sanctuary regulations unless there is a demonstrated need. NOAA will work closely with existing agencies, the SAC, the scientific community, and marine users to identify and clarify any potential problems before promulgating new regulations. NOAA will make all efforts to collect existing relevant scientific data or provide resources to fund research if necessary to investigate the nature, scope, and cause of such problems.

NOAA does not agree, however, that it should only regulate an activity if the activity is found to kill a humpback whale. NOAA firmly believes that resource protection should be proactive in nature and be responsive to potential problems as they arise—this means acting when the problem is identified and confirmed, rather than waiting until after a death occurs before taking any action.

NOAA fully intends to seek input from the SAC on the scope of any potential problems as well as solutions on how to solve those problems (regulatory and non-regulatory). NOAA views this SAC input, as well as those from other agencies and the public, as extremely important in shaping Sanctuary policy. NOAA disagrees, however, that it must first seek ''unanimous approval'' by the SAC before it could ever consider issuing a regulation. The SAC is an advisory body whose role is to provide advice and recommendations to the Sanctuary Manager on policy issues, including regulation. Unanimous approval is not necessary and is unrealistic given the broad spectrum of interests represented on the SAC. NOAA will consider the advice and recommendations of the SAC, as well as comments received during the general public comment period on a proposed regulation, to evaluate whether to proceed with promulgating a new regulation.

Comment: The Sanctuary program should develop a more detailed definition of habitat in the regulations to clarify how the Sanctuary will interface with other permitting agencies.

Response: NOAA's humpback whale habitat definition for the Sanctuary was developed to be consistent with those habitat definitions of the MMPA and the ESA. At this time, humpback whale habitat is based on known whale distributions and on those activities and behaviors that occur in these areas. More scientific research is needed to investigate those specific chemical, physical, and biological components of the marine environment that are truly an important or necessary component for humpback whales before a more precise definition can be proposed. This is also the primary reason the Sanctuary is relying on, and only supplementing, other authorities that regulate discharges and alteration of seabed activities.

As noted in an earlier response, the Hawaii Sanctuary is currently developing MOUs with relevant Federal and State agencies to more clearly define the types of permits the Sanctuary would review and specific procedures for Sanctuary review and comment. The draft MOUs are included in Appendix F of the FEIS/MP.

Comment: New regulations are not needed and NOAA should focus on research and education only.

Response: NOAA disagrees. Resource protection is the primary goal of the National Marine Sanctuary Program and NOAA, as a co-manager in partnership with other Federal and State agencies, must be able to provide adequate protection for those resources. NOAA has determined that a national marine sanctuary must have some minimum level of regulation as part of a Sanctuary's management regime, primarily to protect Sanctuary resources. As detailed in earlier responses, additional protection is needed for humpback whales and their habitat, and incorporating certain existing regulations into the Sanctuary management regime adds more protection. Without having a direct role or authority to manage resources of the Sanctuary, NOAA would not be able to fulfill the responsibilities imposed by the HINMSA to comprehensively manage and protect the Sanctuary and its primary resources, the humpback whale and their habitat.

Furthermore, NOAA would be constrained in its ability to expend Sanctuary resources to enhance enforcement of these existing regulations if it did not, at a minimum, incorporate certain existing restrictions as Sanctuary regulations. Such enhanced enforcement is an integral component of the Sanctuary's management regime protective measures, and is consistent with the overall recommendations contained in the Hawaii Ocean Resources Management Plan (ORMP).

Like research and education, regulation and enforcement are management tools necessary to protect Sanctuary resources. Further, additional Sanctuary resources could be wisely spent to enhance existing enforcement efforts by NMFS, the State Department of Health (DOH), or Department of Land and Natural Resources (DLNR). Such enhancement could be in the form of funding for educational materials about what protective regulations currently exist for the humpback whale and its habitat, for convening workshops for ocean users to discuss enforcement activities, or for funding research to determine adequacy of enforcement

actions. Furthermore, the Sanctuary Program is examining the feasibility of funding additional monitoring or enforcement positions within DOH and DLNR.

Comment: NOAA should support compliance with existing regulations.

Response: NOAA agrees, and has identified this alternative as the preferred regulatory alternative. NOAA believes this regulatory alternative will best allow the Sanctuary to fulfill its responsibilities to protect Sanctuary resources without unnecessarily duplicating existing Federal and State agency rules and regulations that provide protection (directly or indirectly) to humpback whales or their habitat. This alternative also addresses the concerns raised regarding additional Sanctuary regulations and permits. The Sanctuary regulations have no requirements to obtain separate Sanctuary permits to conduct otherwise prohibited activities.

Comment: NOAA should not supplement existing regulations because there is a real potential for future and more stringent regulations, and for higher fees, fines, and penalties.

Response: NOAA disagrees. The final Sanctuary regulations are limited in scope to essentially incorporating those existing Federal and State regulations that protect the humpback whale and its habitat. It is impossible for NOAA to predict whether new regulations will ever be needed or if they will be more stringent. The procedures for issuing new regulations, however, will involve broad public input and gubernatorial review (see earlier response).

NOAA has never proposed any mandatory user fees for the Sanctuary. Further, in 1996 the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. Accordingly, mandatory user fees for the Sanctuary cannot be imposed. The only fees will be those assessed by other Federal, State and county agencies.

To alleviate the public's concern that any violation of a Sanctuary regulation will result in the assessment of the maximum $100,000 civil penalty, NOAA's Office of General Counsel is developing a civil penalty schedule for the Sanctuary, which will be made publicly available. The civil penalty schedule will identify the ranges of fines that could be assessed for violating Sanctuary regulations, taking into account such factors as number of prior violations and the severity or type of violation.

Comment: NOAA should adopt comprehensive regulations to protect the humpback whale and its habitat. Since the MMPA and ESA are currently being watered down, the Sanctuary should have independent regulations to provide supplemental protection.

Response: While NOAA agrees that a complete suite of independent Sanctuary regulations and permits may provide greater protection for humpback whales, it also recognizes the concerns raised by other Federal, State, and county agencies and marine users regarding duplicative laws and multiple permitting processes. Because this Sanctuary protects the humpback whale and its habitat which are already protected by other Federal and State authority, NOAA has attempted to craft a resource protection plan that does not add unnecessary regulation, permits, or time requirements. As such, NOAA believes that working cooperatively with other agencies will best allow NOAA to achieve its limited resource protection goals while minimizing any adverse impact on other agencies and Sanctuary users. If significant changes to existing authorities occur, NOAA may re-evaluate the Sanctuary regulations to determine whether they should be amended.

Comment: NOAA should adopt strict regulations on marine users and activities to protect humpback whales and their habitat so that it has direct authority to provide more protection for humpback whales and a greater ability to prevent those actions that do harm humpback whales or their habitat.

Response: NOAA disagrees. This regulatory alternative is not presently justified by the available data concerning impacts to humpback whales or their habitat.

Comment: National marine sanctuaries should entail ecosystem based management. NOAA should issue regulations to protect the ecosystem so that it can address the true resource management needs in Hawaii.

Response: NOAA does not agree that all marine resources should be included in the Sanctuary and that comprehensive regulations for ecosystem management be implemented at this time. NOAA is required by the HINMSA to identify other areas and ecosystems of national significance for possible inclusion in the Sanctuary. NOAA agrees that an ecosystem-based Sanctuary should be given more consideration, and has detailed a process in Part V(c) of the final management plan (Sanctuary Resources), that will involve substantial input from the SAC, other agencies, and members of the public prior to including additional marine resources or ecosystems. This process will clearly identify and clarify what, if any, such resources should be included in the Sanctuary and what role the Sanctuary should take in their management and protection.

Fishing

Comment: The Sanctuary will restrict fishing in Hawaii.

Response: NOAA disagrees. The proposed management plan and regulations for the Sanctuary did not include the regulation of fishing activities. The final management plan and regulations have not changed. Moreover, fishing is not included as an activity listed in the scope of activities in the Designation Document as being subject to regulation. Thus, any regulation of fishing would constitute a change in the term of the designation, as contained in the Designation Document for the Sanctuary, for which the Secretary of Commerce must comply with the applicable requirements of section 304 of the NMSA. Such requirements include providing the Western Pacific Regional Fishery Management Council (WESPAC) with the opportunity to determine if fishing regulations are necessary and if so, to draft such regulations for the Sanctuary. NOAA would also consult with the State and the SAC, as well as the fishing industry to determine an appropriate course of action to address concerns over impacts to Sanctuary resources from fishing activities. Further, NOAA would be required to solicit public comments, conduct at least one public hearing, and prepare a Supplemental EIS. Finally, the Governor of Hawaii would have the ability to review and veto the amendment to the Designation Document and new Sanctuary regulation before it can take effect in State waters.

All fishing activities in Federal waters are managed by WESPAC and NMFS, and in State waters by the DLNR. There is little evidence to indicate that humpback whales extensively feed while in Hawaiian waters (though opportunistic feeding may occur). As such, whales and fishermen do not extensively interact, or at least, at a level necessitating the creation of Sanctuary regulations governing fishing activities. While fishermen, as well as other marine users, are subject to the existing NMFS regulations prohibiting approaches closer than 100-yards, current enforcement data confirms this relatively low level of disturbance as fishermen have never been cited for harassing a whale in Hawaii. In fact, most fishermen fish in areas that do not

have high whale concentrations because of claims that whales scare the fish away.

The Hawaii Sanctuary recognizes the importance of fishing for livelihood and enjoyment in Hawaii. Additionally, the Sanctuary recognizes the importance of protecting Native Hawaiian fishing and gathering rights and will work to ensure these are not unnecessarily impacted by new regulations.

Enforcement and Penalties

Comment: Civil penalties implies an ''all or nothing'' approach to enforcement. The potential economic consequences of scaring boaters with excessive fines should be noted. The fine structure should be expanded to include degrees of violations, both intentional and unintentional. The inadvertent accident of a well-meaning citizen should not be the grounds for a severe penalty. Who will develop the penalty structure? What public review process will the penalty structure go through. The $100,000 maximum potential fine is scary to ocean users. The Sanctuary needs to clarify what maximum fines are for certain types of violations.

Response: The civil penalty section of the Hawaii Sanctuary regulations (§ 922.186) describes the maximum statutory civil penalty, $100,000, that can legally be assessed for a violation of the NMSA, HINMSA, or any regulation or permit issued under those laws. A civil penalty schedule for the Sanctuary with recommended minimum and maximum penalties will be developed by the NOAA's Office of General Counsel for Enforcement and Litigation with input from the Office of Law Enforcement, in consultation with the Sanctuary program. The schedule will set forth a range of civil penalties that could be assessed for a violation of each Sanctuary prohibition, taking into account aggravating and mitigating factors such as prior violations and the severity of the violation. The civil penalty schedule will be made publicly available and will be similar to other penalty schedules that are presently available for other sanctuary sites (e.g., Key Largo, Looe Key). This schedule should alleviate concerns over the maximum potential penalty being assessed for minor infractions of the law.

Penalties for regulations established under the NMSA are created under civil law and therefore differ from some of those established under other Federal/State jurisdictions within the Sanctuary (those established under criminal law). This will have both positive environmental benefits and overall positive socioeconomic benefits for the Sanctuary. The resources of the Sanctuary will receive a greater level of protection by providing civil authority to other agencies through cross-deputization. Enforcement of regulations is best facilitated by agencies cross deputizing to enforce civil penalties.

Civil authority and coordinated enforcement under the NMSA have positive socioeconomic impacts on society in general in that there are cost savings to the public when agencies can share authorities and combine human and material resources. The Sanctuary regulations provide supplemental civil penalty options. In some cases, civil may be more appropriate than criminal. In some cases, use of both civil and criminal may be appropriate. The resources can be better protected when there are more options for individuals enforcing the regulations. This, in turn, should lead to greater environmental and socio-economic benefits.

Civil authority lends itself more freely to an educational and interpretive approach to enforcement of regulations in national marine sanctuaries. Simply the message that something is a Sanctuary violation is all that is needed to achieve compliance from the vast majority of Sanctuary users. This concept underscores one of the most important goals of a Sanctuary enforcement program—to obtain through education, voluntary compliance with regulations protecting (directly and indirectly) humpback whales and their habitat.

Many commenters have expressed concern about the discretion of enforcement officers in handling violations. Such discretion is applied on a case-by-case basis and, as a result, most violations are addressed through written or verbal warnings. Civil penalties are recommended by the NOAA–GC enforcement attorney upon completion of an investigation by the enforcement officer and review of the case specifics, and will be guided by the Sanctuary civil penalty schedule.

Comment: The Sanctuary brings the added potential for people to get their vessels seized.

Response: In addition to vessel seizure provisions contained within the ESA, the MMPA, and other fishery, customs, and boater laws, the NMSA also contains provisions that authorize vessel seizure in connection with or as a result of any violation of the NMSA or the implementing regulations for the Hawaii Sanctuary. However, it is unlikely that NOAA would seize someone's vessel for violating the humpback whale approach and harassment regulations unless seizure is necessary because the violation was particularly egregious, or if there was a risk the violator intended to leave Hawaiian waters.

User Fees

Comment: Mandatory user fees are inevitable if the Sanctuary is adopted, and will be established either by NOAA or by Congress.

Response: NOAA acknowledges the near universal public and agency opposition of ''user fees'' to fund and manage individual sanctuaries. NOAA did not propose broad-based mandatory user fees in the DEIS/MP. Further, in 1996, the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. NOAA has clarified references to user fees in the final management plan to eliminate any confusion over this issue.

Comment: The Sanctuary will collect fees through special use permits.

Response: NOAA has not provided for the issuance of special use permits in Hawaii. NOAA has generally only issued special use permits in a few sanctuaries to allow an activity to occur that would otherwise be prohibited by a specific Sanctuary regulation. The Hawaii Sanctuary has not proposed, in either the DEIS/MP or FEIS/MP, issuing independent permits, including special use permits.

Socio-Economic Impacts

Comment: The Sanctuary proposes to incorporate the National Marine Fisheries Service humpback whale approach regulations that were amended in 1994. The Sanctuary should analyze the socio-economic impacts of these 1994 amendments.

Response: The Sanctuary program has no direct jurisdiction over the MMPA or its amendments which were signed into law by Congress in 1994. Congress, in coordination with affected agencies, must consider the environmental and socio-economic impacts of new or modified laws and regulations prior to their enactment. The Sanctuary program is not required to evaluate the socio-economic impacts of the 1994 amendments to the MMPA. However, NOAA has assessed the socio-economic impacts of incorporating the NMFS regulations into the Sanctuary's management regime. Based on the assessment, NOAA has determined that there will be minimal, if any, negative socio-economic consequences associated with incorporation of the regulations into the Sanctuary's

management regime. Part IV of the FEIS/MP discusses socio-economic consequences more in-depth.

Comment: The socio-economic impacts of future regulations has not been clearly articulated in Part IV (the socio-economic impacts analysis section) of the DEIS/MP.

Response: NOAA has not assessed the socio-economic impacts for future regulations because the need or likelihood of such regulation is speculative. NOAA has determined, based on existing information, that no new regulatory prohibitions or restrictions are needed to protect humpback whales and their habitat. NOAA cannot say if new regulations will be needed in the future, how restrictive they will be, or which user groups will be affected.

Comment: Unnecessary Sanctuary regulations and restrictions will have a direct negative-effect on the cost of transporting goods between neighbor islands.

Response: NOAA is not adding any new independent regulatory prohibitions or restrictions to those already in place. Rather, NOAA is essentially incorporating certain regulations already in existence to protect humpback whales and their habitat. For example, the 100-yard humpback whale approach regulations have been in place and enforced by NMFS since 1987. These regulations have not had significant adverse effects on the cost of transporting goods between islands, and could only impact the cost of transporting goods if a vessel captain was in violation of these regulations.

Comment: NOAA should exempt all commercial transport activities from Sanctuary regulations because of negative economic impacts.

Response: NOAA does not agree that commercial transport should be singled out as the only industry that should be exempted from the Sanctuary regulations. The Sanctuary regulations essentially incorporate certain existing restrictions as Sanctuary regulations and do not add independent Sanctuary regulatory prohibitions or restrictions, permits, or approval requirements beyond what is already. Consequently, the Sanctuary will not pose negative socio-economic impacts on the commercial transport industry. Exempting commercial transport activities from the Sanctuary regulations is neither necessary nor consistent with achieving the purposes of the HINMSA. The commercial transport industry has never been cited for whale harassment.

III. Summary of the Final Management Plan

The final management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary sets forth the Sanctuary's location and provides background information on humpback whales and their habitat, other marine resources located in Hawaii, and human uses of the area. The final management plan describes the resource protection, research and long-term monitoring, education and interpretive programs, and details specific activities to be undertaken in each program. The final management plan also includes a discussion, by program area, of agency roles and responsibilities and a description of Sanctuary administration, including the establishment of a SAC. Major components of the final management plan are summarized below.

Resource Protection

Unlike most other national marine sanctuaries, which are based on protecting and managing a marine ecosystem environment, the only resources included for protection and management under the Sanctuary regime are humpback whales and their habitat. Thus, the highest management priority for the Sanctuary is the long-term protection of the humpback whales and their habitat in Hawaii. In addition to the HINMSA, the humpback whale is specifically protected by two other Federal laws. The humpback whale is listed as an endangered species under the ESA, and is protected under the MMPA, both administered by NOAA's NMFS. As many of the activities affecting humpback whales and their habitat are presently regulated or governed by these and other existing Federal, State and county authorities, the Sanctuary management will primarily work with these authorities to ensure comprehensive, complementary, coordinated and more efficient management and protection of humpback whales and their habitat. Sanctuary management will also work with existing Federal and State enforcement entities to coordinate enforcement efforts, develop annual enforcement plans, and respond to public concerns.

The goals and objectives of the Resource Protection Program are designed to reinforce, complement and coordinate existing management and regulatory efforts; fill gaps in existing authorities; enhance public participation and awareness in protecting humpback whales and their habitat; address some of the problems, objectives and policies identified in the Hawaii Ocean Resource Management Plan (1991), the NMFS Final Recovery Plan for the Humpback Whale (1991), and other programs, such as point and non-point source pollution control measures as they relate to the protection of the humpback whale's Hawaiian habitat. Because the only resources included for protection and management under the Sanctuary regime—humpback whales and their habitat—already are protected, directly and indirectly, by a number of other laws (e.g., ESA, MMPA, Clean Water Act, Rivers and Harbors Act, and the Coastal Zone Management Act), the Sanctuary will reinforce these existing management regimes without adding to current regulatory and administrative requirements.

To fulfill the statutory mandate of providing long-term protection for the population of humpback whales and their Sanctuary habitat, the Resource Protection Program has the following objectives and strategies:

(1) Coordinate and complement policies and procedures among the agencies sharing regulatory responsibility for the protection and management of humpback whales and humpback whale habitat within the Sanctuary (Sanctuary habitat), primarily with NMFS, and also with other various Federal, State and county agencies of competent jurisdiction;

(2) Develop and issue Sanctuary regulations only as necessary to reinforce and complement existing efforts and fill gaps in existing authorities for the protection and management of humpback whales and their Sanctuary habitat;

(3) Complement coordination among appropriate Federal, State and county authorities to enhance enforcement of existing laws that fulfill Sanctuary goals;

(4) Encourage participation by interested agencies and the public in the development of procedures to address specific management concerns (e.g., research, long-term monitoring, enforcement, education, and emergency-response programs);

(5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives and other authorities in place that protect humpback whales and their Sanctuary habitat, through education and interpretive programs stressing resource sensitivity and wise use of the marine environment;

(6) Utilize research and monitoring results and other scientific data from resource management agencies and researchers to develop effective,

comprehensive resource protection strategies and improve management decision-making; and

(7) Facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of the humpback whales and their Sanctuary habitat.

Research and Long-Term Monitoring Program

Effective management of the Sanctuary's resources requires the development and implementation of a responsive Sanctuary research and long-term monitoring program. The primary goals of the Research and Long-Term Monitoring Program are to improve our understanding of humpback whales and their habitat requirements; identify, address and resolve specific management concerns; establish a long-term ecological monitoring program with respect to humpback whales and their habitat; coordinate and facilitate information exchange among the various researchers and institutions, agencies, and the general public; and enhance the public's participation in resource stewardship. Other research priorities will pertain to identifying and assessing additional marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The Research and Long-Term Monitoring Program will be part of the overall effort to implement portions of the NMFS Final Recovery Plan for the Humpback Whale and other long-term protection plans for humpback whale habitat (e.g., Hawaii Ocean Resource Management Plan). The specific objectives for the Sanctuary Research and Long-Term Monitoring Program are to:

(1) Improve the present understanding of humpback whales' vital life rates (age at sexual maturity, pregnancy rates, calving intervals, mortality and age-specific mortality), abundance, distribution, movement, behavior, and interrelationships with their Hawaiian habitat;

(2) Characterize the marine environment to establish baseline parameters for identifying, detecting and monitoring natural- and human-induced changes to humpback whales and their habitat, and to identify research needs and gaps;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring research projects to ensure that the research topics are responsive to management concerns and that research results contribute to improved management decisionmaking in the Sanctuary;

(4) Develop a long-term ecological monitoring program to detect and determine the cause or causes of future changes and trends in the vital parameters and the important habitat components of the humpback whale population that winters in the Hawaiian Islands;

(5) Develop a data and information management system for tracking and integrating new information into an evolving understanding of humpback whales and their habitat; and

(6) Encourage information exchange among all researchers, organizations and agencies undertaking humpback whale and habitat related research in the Sanctuary and elsewhere to promote more informed management and decisionmaking.

(7) Facilitate the process to evaluate marine resources, in addition to humpback whales and their habitat, for possible inclusion in the Sanctuary.

Education and Interpretation Program

The primary goals of the Education and Interpretation Program are to improve public awareness and understanding of the humpback whale and its habitat; enhance knowledge of the Sanctuary's purposes, goals and resource protection strategies; facilitate responsible human uses within the Sanctuary consistent with the primary objective of protection of the humpback whale and its habitat; encourage public participation; and facilitate information exchange among the various environmental educators and interpreters, researchers, agencies, and the general public. Particular focus will be placed on projects which interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment, as well as educating the public about native Hawaiian traditions and uses as they relate to Hawaii's marine environment.

On-site visitor programs will be instituted consisting of making available printed materials describing the Sanctuary for distribution at statewide government offices, marine recreation businesses, marinas, whalewatching vessels, humpback whale interpretive centers, libraries, schools, airports, harbors and other local establishments. The Sanctuary headquarters, located in Kihei, Maui, and other visitor and information centers located throughout Hawaii will be used to inform visitors about the Sanctuary, humpback whales and their habitat, and Hawaii's marine environment.

The specific objectives of the Sanctuary Education and Interpretation Program are to:

(1) Enhance public awareness, understanding and appreciation of humpback whales and their habitat;

(2) Create public awareness of the National Marine Sanctuary Program, the Hawaiian Islands Humpback Whale National Marine Sanctuary, and other humpback whale conservation groups and organizations;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring education projects to ensure that the education topics are responsive to management concerns and that the education products contribute to greater understanding and appreciation of the Sanctuary, humpback whales and the broader Hawaiian Islands marine environment;

(4) Encourage information exchange among all persons, organizations and agencies undertaking environmental education and research activities in the Sanctuary;

(5) Establish a user-friendly Data/Information Center for the location of information and research results pertaining to Sanctuary resources and management information; and

(6) Establish cooperative education programs with native Hawaiian groups to educate people about native Hawaiian traditions, culture, uses and religion as they relate to Hawaii's unique marine environment.

Sanctuary Administration

Depending on the resources available to the Sanctuary, staffing will include a Sanctuary manager, administrative assistant, research coordinator, education coordinator, and one or more enforcement/interpreter personnel. Staff will be distributed among the Sanctuary's headquarters, other satellite offices located on other islands, and/or within other agencies. Arrangements may be made among various levels of government agencies and private sector organizations through cooperative agreements or memoranda of understanding to provide personnel and/or resources to carry out the duties associated with the research and education coordinator positions. On-site activities will be coordinated through cooperative arrangements and/or specific memoranda of understanding between NOAA's SRD and other Federal, State, and county agencies, and non-governmental organizations, as appropriate.

A twenty-five member SAC has been established pursuant to section 315 of the NMSA (16 U.S.C. 1445a) to enable

agencies, interested groups, and individuals to provide advice and recommendations on the management of the Sanctuary. The SAC consists of a balanced representation of marine user groups affected by Sanctuary designation, including Federal and State authorities, Native Hawaiian groups, fishing interests, commercial whalewatching industry, boating industry, environmental interests, researchers, education groups, and members of the community. The SAC acts in an advisory capacity to the Sanctuary Manager and will be helpful in the development of annual operating plans and reports by providing to the Sanctuary Manager advice and recommendations on education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC will play an instrumental role in advising the Sanctuary Manager on the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary through a process outlined in Part 4(c) of the final management plan. The SAC works in concert with the Sanctuary Manager by keeping her or him informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and advising the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

In order to function efficiently in an advisory capacity and incorporate the different concerns from all the main Hawaiian Islands, the SAC may form subcommittees that correspond to the main Sanctuary management areas of education, research, resource protection, regulations/enforcement, revenue enhancement, and others as necessary. Additional subcommittees may be formed to provide recommendations to the SAC on the identification and assessment of other marine resources and ecosystems of national significance for possible inclusion into the Sanctuary. Technical working groups may also be formed to provide informational or technical assistance on specific issues. To ensure county representation, the SAC would have one seat for each of the four counties (Kauai, Honolulu, Maui and Hawaii Big Island).

IV. Final Designation Document and Implementing Regulations

The terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary to protect these characteristics. The terms of designation may be modified only by those procedures provided in section 304 of the NMSA. Thus, the terms of designation serve as a constitution for the Sanctuary. In the case of this statutorily designated Sanctuary, many of the terms of designation are contained in the HINMSA. The final Designation Document follows:

Final Designation Document for the Hawaiian Islands Humpback Whale National Marine Sanctuary

On November 4, 1992, President Bush signed into law the Hawaiian Islands National Marine Sanctuary Act (HINMSA or Act; Subtitle C of the Oceans Act of 1992, Pub. L. 102–587) which designated the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary).

The purposes of the Sanctuary are to:

(1) protect humpback whales and their Sanctuary habitat;

(2) educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;

(3) manage human uses of the Sanctuary consistent with the designation and Title III of the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA; also cited as the National Marine Sanctuaries Act or NMSA), 16 U.S.C. § 1431 *et seq.*; and

(4) provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

Article I. Effect of Designation

Section 2306 of the HINMSA requires the Secretary to develop and issue a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Act, consistent with the procedures of sections 303 and 304 of the NMSA. Section 304 of the NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and aesthetic resources and qualities of the Hawaiian Islands Humpback Whale National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities subject to regulation which are those activities that may be regulated on the effective date of the regulations, or at some later date in order to implement the Sanctuary designation.

Article II. Description of the Area

The HINMSA identified a Sanctuary boundary but authorized the Secretary to modify the boundary as necessary to fulfill the purposes of the designation. The Sanctuary boundary was modified by the Secretary to encompass the submerged lands and waters off the coast of the Hawaiian Islands extending seaward from the shoreline, cutting across the mouths of rivers and streams,—

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the island of Hawaii;

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor & Small Boat Basin
Keauhou Bay

Oahu

Ala Wai Small Boat Basin

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

As specified at sections 2305(b) of the HINMSA, on January 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island was to become part of the Sanctuary, unless during the 3

month period immediately preceding January 1, 1996, the Secretary certified in writing to Congress that the area was not suitable for inclusion in the Sanctuary. The Secretary made such a certification in December 1995. As such, the waters surrounding Kahoolawe are not included in the Sanctuary. The HINMSA was amended in 1996 to allow the Kahoolawe Island Reserve Commission (KIRC) to request inclusion of the marine waters three miles from Kahoolawe in the Sanctuary. Upon receiving a request from the KIRC, should NOAA determine that Kahoolawe waters may be suitable for inclusion in the Sanctuary, NOAA will prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion. This process will include the opportunity for public comment. Further, the Governor would have the opportunity to certify his or her objection to the inclusion, or any term of that inclusion, and if this occurs, the inclusion or term will not take effect.

Article III. Characteristics of the Area That Give It Particular Value

The Hawaiian Islands comprise an archipelago which consist of eight major islands and 124 minor islands, with a total land area of 6,423 square miles, and a general coastline of 750 miles. The central North Pacific stock of endangered humpback whales, the largest of the three North Pacific stocks, estimated to be at approximately 10% of its pre-whaling abundance, uses the waters around the main Hawaiian Islands for reproductive activities including breeding, calving and nursing. The warm, calm waters around the main Hawaiian Islands provide protective environments required for such activities. Of the known wintering and summering areas in the North Pacific used by humpback whales, the waters around the main Hawaiian Islands maintain the largest seasonally-resident population; approximately 2,000 to 3,000 humpback whales use these waters. The proximity to shore helps support an active commercial whalewatch industry, which is supported annually by millions of visitors who either directly or indirectly enjoy the Sanctuary waters.

In sections 2302 (1) and (4) of the HINMSA, Congressional findings state that ''many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance,'' and ''the marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem.'' In addition, Congress found that the Sanctuary could be expanded to include other marine resources of national significance. The waters around the Hawaiian Islands contain 24 other species of cetaceans, the highly endangered Hawaiian monk seal, three species of sea turtles and many other marine species endemic to this environment. Coastal Hawaiian waters also support spectacular coral reef ecosystems which provide local people with an abundant source of fish and are a popular dive destination for visitors worldwide. These waters also contain a number of cultural/historical resources, including those reflecting native Hawaiian traditions and uses.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. In order to implement the Sanctuary designation, the following activities are subject to regulation to the extent necessary and reasonable to ensure the protection and management of the characteristics and values of the Sanctuary described above; primarily the protection and management of humpback whales and their Sanctuary habitat. Regulation may include governing the method, location, and times of conducting the activity, and prohibition of the activity, after public notice and an opportunity to comment. If a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the procedures outlined in section 304(a) of the NMSA. Such activities are:

a. Approaching, or causing another vessel or object to approach, by any means a humpback whale in the Sanctuary;

b. Flying over a humpback whale in the Sanctuary in any type of aircraft except as necessary for takeoff or landing from an airport or runway;

c. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter into, or that enters or could enter the Sanctuary, without, or not in compliance with, the terms or conditions of a required, valid Federal or State permit, license, lease or other authorization;

d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary without, or not in compliance with, the terms or conditions of a required, valid Federal or State permit, license, lease or other authorization;

e. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any humpback whale or humpback whale habitat;

f. Possessing within the Sanctuary a humpback whale or part thereof regardless of where taken, removed, moved, caught, collected or harvested; and

g. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation or permit issued under the HINMSA or NMSA.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition. If such a situation arises, the Director of NOAA's Office of Ocean and Coastal Resource Management or his or her designee shall seek to notify and consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the NMSA, 16 U.S.C. § 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 4, 1992).

Article VI. Alteration of This Designation

The terms of designation, as defined under section 304 of the NMSA, may be modified only by the procedures outlined in section 304, including public hearings, consultation with interested Federal, State, and county agencies, review by the appropriate Congressional committees, and review and non-objection by the Governor of the State of Hawaii, and approval by the Secretary of Commerce, or his or her designee.

Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Appendix A to subpart Q, part 922, 15 CFR sets forth the precise boundary coordinates for the Sanctuary.

End of Final Designation Document

V. Summary of Final Regulations

The final regulations set forth the boundary of the Sanctuary and supplement existing authorities by prohibiting a relatively narrow range of activities that are conducted without, or not in compliance with required, valid authorizations from Federal or State authorities of competent jurisdiction. The final regulations set forth the maximum per-day penalties for violating the NMSA, HINMSA, or any Sanctuary regulation; identify the interagency cooperation requirements under the NMSA; and set forth procedures for administrative appeals.

Organizationally, the final regulations are revised from the proposed regulations in furtherance of the President's Regulatory Reinvention Initiative to, among other things, consolidate duplicative regulatory provisions. Consequently, the new regulations for the most part appear in a new subpart Q to 15 CFR part 922 (15 CFR 922.180–922.187) and in Appendix A to subpart Q. Existing §§ 922.3 and 922.46 of 15 CFR 922 are also applicable to the Sanctuary. In some instances, this rule makes minor revisions to those and other sections of the National Marine Sanctuary Program Regulations at 15 CFR Part 922 to make them meld with the new subpart Q.

The HIHWNMS is unlike most other national marine sanctuaries for a number of reasons. First, while most national marine sanctuaries are designated to protect ecosystem environments, the Congress designated the HIHWNMS primarily to protect the humpback whale and its habitat. These are the only resources included for protection and management under the Sanctuary regime. Second, the humpback whale is directly protected under two other Federal laws; the ESA and MMPA, administered by NOAA's NMFS.

The final regulations reflect the uniqueness of the Sanctuary. For example, with one exception (hindering law enforcement activities) the regulations do not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary to those already in place under other regulatory authorities. Rather, to protect humpback whales and their Sanctuary habitat the final regulations essentially rely on and incorporate restrictions or prohibitions already in place under Federal and State authorities that protect, directly and indirectly, humpback whales and humpback whale habitat within the Sanctuary. By essentially incorporating into the Sanctuary regulatory regime restrictions or prohibitions already existing under other authorities greater protection is provided to humpback whales and their habitat. Further, existing restrictions or prohibitions are strengthened because they can be enforced by Sanctuary personnel and are subject to enforcement mechanisms and penalties of the NMSA. Moreover, monies collected as civil penalties under the NMSA will be available to manage and improve the Sanctuary.

The final regulations prohibit the following activities also prohibited under the MMPA or ESA: approaching any humpback whale; operating an aircraft above a humpback whale; and taking or possessing any humpback whale. However, any of these activities could be conducted if permitted or authorized under the MMPA or ESA. Additionally, the final regulations prohibit the following activities conducted without, or not in compliance with, a required Federal or State permit, license, lease or other authorization: discharging or depositing in the Sanctuary any material or other matter; discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or habitat; and altering the seabed of the Sanctuary. It is important to note that these final regulations prohibit these activities only if a permit, license, lease, or other authorization from a Federal or State authority of competent jurisdiction is required to conduct them and they are conducted without, or not in compliance with, such authorization. The only independent prohibition in the final regulations is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either the NMSA or HINMSA or any regulation issued under either of those Acts.

Also, unlike the regulations in effect for other sanctuaries, the final regulations do not contain any provision for the issuance of Sanctuary permits or authorizations to conduct an otherwise prohibited activity. Since the regulations essentially incorporate restrictions or prohibitions imposed by other existing authorities, Sanctuary management will recognize permits or other authorizations issued by those authorities to conduct an otherwise prohibited activity. Sanctuary management will coordinate with NMFS on the issuance of permits or authorizations under the ESA and MMPA, and with other Federal and State agencies that issue discharge or alteration of the seabed permits or other authorizations for activities that could impact humpback whales, or humpback whale habitat within the Sanctuary. Such coordination should eliminate potentially duplicative administrative processes while still allowing the Sanctuary to fulfill its trustee responsibilities to protect and manage humpback whales and humpback whale Sanctuary habitat.

Specifically, the final regulations add a new subpart Q to Part 922, Title 15, Code of Federal Regulations.

Section 922.180 sets forth the purpose of the regulations which is to implement the designation of the HIHWNMS, consistent with the terms of that designation, by regulating a narrow range of activities in order to protect and manage the North Pacific population of humpback whales, and their wintering habitat in the Sanctuary.

Section 922.181 and Appendix A to subpart Q set forth the boundary of the Sanctuary.

Section 922.182 defines various terms used in the regulations. Other terms appearing in these regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401–1445, and 16 U.S.C. 1431–1445). ''Sanctuary resource'' is defined as ''any humpback whale, or the humpback whale's habitat within the Sanctuary,'' because these are the only resources included for protection and management under the Sanctuary regime at this time.

Section 922.183 allows all activities except those prohibited by § 922.184 to be undertaken subject to any emergency regulation promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA, 16 U.S.C. 1434(d), subject to the liability established under section 312 of the NMSA, 16 U.S.C. 1443, and subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. Under § 922.183, the regulatory prohibitions in § 922.184 expressly do not apply to military activities conducted by the United States Department of Defense, including combined military activities conducted by DOD and the military forces of a foreign nation, in existence on the effective date of these regulations and as identified and listed in the FEIS/MP for the Sanctuary. Military activities

proposed after the effective date of the regulations would be subject to the regulatory prohibitions unless they are not likely to destroy, cause the loss of, or injure any humpback whale or humpback whale habitat in the Sanctuary, or if after consultation under section 304(d) of the NMSA, the Director of NOAA's Office of Ocean and Coastal Resource Management (OCRM) expressly finds that the regulatory prohibitions do not apply to the military activity. Exemption from the regulatory prohibitions recognizes the importance DOD military activities in Hawaii to our national security, and should not result in adverse impacts to humpback whales or their Sanctuary habitat. Further, DOD operating procedures require military activities to be conducted in a manner that avoids adverse impacts to humpback whales and requires compliance with applicable authorities already in place to protect humpback whales. Department of Defense military activities remain subject to the statutory requirements of the NMSA (e.g., interagency cooperation provisions of section 304(d), and the liability established by section 312), any emergency regulation promulgated in section 922.185, and all other applicable laws (e.g., ESA, MMPA).

Section 922.184 prohibits a relatively narrow range of activities and thus make it unlawful to conduct them. As discussed above, the Sanctuary is unlike most other national marine sanctuaries in that the only resources that are included for protection and management under the Sanctuary regime are humpback whales and their Sanctuary habitat and those resources are already protected under other laws. Therefore, unlike any other national marine sanctuary, the regulations, with the exception of a prohibition on hindering enforcement activities, do not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary. Rather, the regulations essentially incorporate restrictions or prohibitions already in place under existing Federal and State authorities that protect, directly or indirectly, humpback whales and humpback whale habitat. Thus, the regulations prohibit certain activities only if they are conducted without, or not in compliance with, a valid Federal or State permit, license, lease or other authorization required to conduct the activity. For example, if a person is discharging any material or matter into the Sanctuary without, or not in compliance with, a required National Pollutant Discharge Elimination System (NPDES) permit from the Hawaii Department of Health, that person will be in violation of the Sanctuary regulations. Similarly, if a person approaches a humpback whale in the Sanctuary in violation of the MMPA or ESA, that person will also be in violation of the Sanctuary regulations. Reinforcing existing restrictions provides additional protection for humpback whales, and humpback whale habitat in the Sanctuary necessary to achieve the purposes of the designation.

The prohibitions will be applied to foreign persons and foreign-flag vessels in accordance with recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Any of the prohibited activities could be lawfully conducted under these regulations, and therefore not be subject to civil penalties under the NMSA, if the activity is necessary to respond to an emergency threatening life, property, or the environment (not applicable to the prohibitions against interference with law enforcement); or necessary for valid law enforcement purposes. However, while such activity would not be subject to enforcement mechanisms or civil penalties under the NMSA, the emergency exemption in these regulations does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

The first activity prohibited is approaching, or causing another vessel or object to approach, while in the Sanctuary, by any means, within 100 yards (90 m) of any humpback whale except as authorized under the MMPA and the ESA.

The second activity prohibited is operating any aircraft above the Sanctuary within 1,000 feet (300 m) of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA. The exception for takeoff and landing was slightly modified from the proposed rule and the FEIS/MP to clarify its meaning. It previously read ''when in any designated flight corridor for takeoff and landing from an airport or runway''. However, as designated corridors constantly change due to environmental conditions (e.g., weather), it is clearer to simply state ''as necessary for takeoff and landing from an airport or runway.''

The intent of the first two prohibitions is to extend protection to humpback whales from harassment or other disturbance from human approaches by strengthening existing protections under the MMPA and the ESA (50 CFR 222.31(a) (1)–(3)). As prohibitions under the Sanctuary regulations, they are strengthened since they can be enforced by Sanctuary personnel and are be subject to enforcement mechanisms and civil penalties under the NMSA. Moreover, monies collected as civil penalties under the NMSA will be available to manage and improve the Sanctuary.

The third activity prohibited is the taking of humpback whales in the Sanctuary, except as authorized under the MMPA and the ESA. As with the first two prohibitions, the intent of this prohibition also is to extend protection to humpback whales from taking, as defined by the ESA and MMPA, by reinforcing the protections afforded under these laws.

The fourth activity prohibited is the possession within the Sanctuary of any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA (regardless of where taken, moved or removed from). This prohibition is designed to facilitate and supplement enforcement for violations of the MMPA, ESA and Sanctuary regulations.

The fifth activity prohibited is discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures any humpback whale or humpback whale habitat; provided that such activity requires a Federal or State permit, license, lease or other authorization, and is conducted (i) without such permit license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization. Degradation of water quality, sediment quality, and modification of the seabed within the Sanctuary could adversely affect the humpback whale's habitat and, therefore, regulation of discharges and deposits and activities that alter the seabed is necessary. However, this prohibition recognizes that the humpback whale's Hawaiian habitat may not necessarily entail every aspect of the marine environment, and is, therefore, intended to enhance existing protections by supplementing enforcement authority and providing for the application of greater maximum civil penalties under the NMSA against illegal, and potentially harmful, discharge or deposit, or alteration of the seabed activities. Also, this provision

does not prohibit or otherwise regulate discharge or deposit, or alteration of the seabed activities which do not require a Federal or State permit, license, lease or other authorization. Rather, this prohibition only applies in instances when a person is conducting a particular activity without, or not in compliance with, a required Federal or State permit, license, lease or other authorization. This provision helps ensure that general water quality and seabed conditions in the Sanctuary will not degrade. As a result of the ongoing research and long-term monitoring program contained in the management plan for the Sanctuary, information will identify those specific features and qualities of the marine environment that are significant habitat components. Such information will aid the Sanctuary and other relevant Federal, State and county agencies in devising specific management techniques and, if necessary, additional regulations to further protect humpback whale habitat.

The sixth activity prohibited is interference with, obstruction, delay or prevention of any investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation issued under either of those Acts. The intent of this prohibition is to ensure the facilitation of Sanctuary enforcement activities, which enhance resource protection.

Section 922.185 authorizes the immediate temporary regulation, including prohibition, of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to any humpback whale or humpback whale Sanctuary habitat, or minimize the imminent risk of such destruction, loss or injury. If such a situation arises, the Director would seek to notify and consult with potentially affected Federal agencies and the Governor of Hawaii prior to taking such action.

Section 922.186 sets forth the maximum statutory civil penalty per day for violating the NMSA, HINMSA or any Sanctuary regulation at $100,000. Each day of a continuing violation constitutes a separate violation. This section also establishes the right of any person subject to a Sanctuary enforcement action to appeal pursuant to applicable procedures in 15 CFR Part 904.

Section 922.187 implements the consultation with NOAA requirements of section 304(d) of the NMSA, 16 U.S.C. 1434(d), as it pertains to the Sanctuary. Any proposed Federal agency action internal or external to the Sanctuary, including private activities authorized by licenses, leases, or permits, that is likely to destroy, cause the loss of, or injure any Sanctuary resource, in this case the humpback whale or its Sanctuary habitat, is subject to consultation with the Director. The Federal agency proposing the action is required to determine whether the activity is likely to destroy, cause the loss of, or injure a humpback whale or humpback whale Sanctuary habitat at the earliest practicable time, but no later than 45 days before final approval of the action, unless a different schedule is agreed upon by the Federal agency and the Director. However, should SRD obtain information that a Federal agency action is likely to destroy, cause the loss of, or injure any Sanctuary resource, SRD would notify the Federal agency in writing that it believes section 304(d) applies, and the reasons why. SRD and NMFS have developed an MOU specifying internal agency coordination and cooperation with respect to consultations required under section 304(d) of the NMSA and section 7 of the ESA for Federal activities that may affect humpback whales or their Sanctuary habitat. In essence, the MOU ensures that consultations will be conducted through one NOAA point of contact, NMFS, to streamline the consultation processes under the NMSA and ESA for consultations pertaining to humpback whales or their habitat.

VI. Miscellaneous Rulemaking Requirements

Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact a substantial number of small entities as follows:

The National Oceanic and Atmospheric Administration, as required by section 2306 of the HINMSA [the Hawaiian Islands National Marine Sanctuary Act], has developed a comprehensive final management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the HIHWNMS or Sanctuary). The Sanctuary was designated by Congress in 1992. The preamble to the final rule publishes the final Designation Document and summarizes the final management plan. The management plan details the goals and objectives, management responsibilities, research and long-term monitoring activities, and interpretive, educational, and resource protection programs for the Sanctuary.

The primary purposes of the Designation Document, final regulations and final management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA [the National Marine sanctuaries Act]; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The final regulations implement the final management plan and govern the conduct of activities consistent with the HINMSA, the NMSA, and the Designation Document for the Sanctuary. The regulations allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. However, the prohibitions primarily only repeat existing Federal and State regulations (such as existing NOAA whale approach prohibitions) that protect (directly and indirectly) humpback whales and their habitat and which were in place before the designation of the Sanctuary. They impose no new substantive restrictions (other than of a ''housekeeping'' nature such as prohibiting anyone from interfering with a Sanctuary enforcement officer) on any person or entity and thus should have no significant economic impact on any person or entity. Accordingly, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act of 1980

This rule does not contain collection of information requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (Pub. L. 96–511).

Executive Order 12612

A Federalism Assessment (FA) was prepared for the draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(a)), a DEIS and FEIS have been prepared for the implementation of the designation and the proposed regulations. As required by section 304(a)(2) of the NMSA, the DEIS and FEIS include the resource

assessment report required by section 303(b)(3) of the NMSA (16 U.S.C. 1433(b)(3)), maps depicting the proposed boundary of the designated area, and the existing and potential uses and resources of the area. Copies of the FEIS are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This final rule will not have any takings implications within the meaning of Executive Order 12630 because it does not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 15 CFR Part 922

Administrative practices and procedure, Coastal zone, Education, Environmental Protection, Marine resources, Natural Resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: March 21, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all twelve National Marine Sanctuaries for which site-specific regulations appear in subparts F through Q, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through Q is to implement the designations of the twelve National Marine Sanctuaries for which site specific regulations appear in subparts F through Q, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

4. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

The boundary for each of the twelve National Marine Sanctuaries covered by this part is described in subparts F through Q, respectively.

5. Section 922.42 is revised to read as follows:

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through Q, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, or 922.186, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

6. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through Q set forth site-specific regulations applicable to the activities specified therein.

7. Section 922.44 is revised to read as follows:

§ 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

8. Part 922 is amended by adding a new subpart Q immediately following subpart P as follows:

Subpart Q, Part 922—Hawaiian Islands Humpback Whale National Marine Sanctuary

Sec.
922.180 Purpose.
922.181 Boundary.
922.181 Definitions.
922.183 Allowed activities.
922.184 Prohibited activities.
922.185 Emergency regulations.
922.186 Penalties; appeals.
922.187 Interagency cooperation.

Appendix A to Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 306, 307, 310, and 312 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*), and sections 2304, 2305, and 2306 of the Hawaiian Islands National Marine Sanctuary Act (HINMSA), Pub. L. 102–587.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military

activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) The regulations in this subpart may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams, —

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Island of Hawaii;

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor & Small Boat Basin
Keauhou Bay

Oahu

Ala Wai Small Boat Basin

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor
Molokai
Hale o Lono Harbor
Kaunakakai Harbor

(c) The precise boundary of the Sanctuary appears in appendix A of this subpart Q.

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Public Law 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this section are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of the regulations in this subpart, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a) (1) through (5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of the regulations in this subpart, are also included as allowed activities under the first sentence of paragraph (a) of this section.

Paragraphs (a) (1) through (5) of § 922.184 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) Upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (5) of § 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this section is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) Requires a Federal or State permit, license, lease, or other authorization; and

(ii) Is conducted

(A) Without such permit, license, lease, or other authorization, or

(B) Not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (5) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (5) of this section, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart is subject to a civil penalty of not more than $100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

(c) A person subject to an action taken for enforcement reasons for violation of the regulations in the subpart or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Kauai		
1	22,13,37	159,34,57
2	22,16,42	159,36,4
3	22,17,13	159,35,16
4	22,17,25	159,34,34
5	22,17,15	159,33,2
6	22,16,59	159,32,3
7	22,16,34	159,31,31
8	22,15,47	159,31,19
9	22,15,41	159,31,5
10	22,16,14	159,30,37
11	22,16,6	159,29,46
12	22,15,50	159,29,20
13	22,15,52	159,28,32
14	22,15,31	159,27,54
15	22,15,25	159,27,17

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
16	21,52,0	159,22,56
17	21,59,17	159,18,25
18	21,58,42	159,18,51
19	21,58,28	159,18,56
20	21,58,10	159,18,54
21	21,58,4	159,18,32
22	21,57,5	159,18,41
23	21,56,43	159,19,4
24	21,56,13	159,19,39
25	21,55,29	159,20,36
26	21,54,48	159,21,12
27	21,54,1	159,21,27
28	21,53,45	159,21,46
29	21,53,27	159,22,14
30	21,53,1	159,22,32
31	21,52,44	159,22,37
32	21,52,13	159,22,49
33	21,51,45	159,23,18
34	21,51,43	159,23,50
35	21,51,49	159,24,26
36	21,51,53	159,24,48
37	21,51,51	159,25,12
38	21,51,42	159,25,41
39	21,51,15	159,25,58
40	21,50,57	159,26,15
41	21,52,17	159,26,48
42	22,12,53	159,18,4
43	22,15,26	159,26,20
44	22,15,11	159,25,52
45	22,15,18	159,24,50
46	22,15,22	159,24,10
47	22,15,21	159,22,53
48	22,15,6	159,22,34
49	22,15,6	159,21,54
50	22,15,7	159,21,23
51	22,14,30	159,20,55
52	22,14,18	159,20,31
53	22,14,22	159,19,54
54	22,13,21	159,18,43
55	22,12,31	159,17,46
56	22,12,18	159,17,17
57	22,11,14	159,17,5
58	22,10,29	159,16,42
59	22,9,57	159,16,25
60	22,9,25	159,15,42
61	22,8,34	159,15,39
62	22,0,15	159,18,48
63	22,7,4	159,16,37
64	22,6,17	159,16,31
65	22,5,51	159,16,13
66	22,5,4	159,16,47
67	22,4,18	159,17,32
68	22,3,32	159,17,28
69	22,3,15	159,17,23
70	22,2,56	159,17,33
71	22,2,48	159,17,48
72	22,2,33	159,18,4
73	22,2,16	159,18,24
74	22,1,57	159,18,46
75	22,1,51	159,19,11
76	22,1,26	159,19,24
77	22,0,59	159,19,8
78	22,0,49	159,18,54
79	22,0,0	159,18,47
80	21,59,40	159,18,27

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Oahu (North)		
1	21,36,22	158,6,37
2	21,38,41	158,8,39
3	21,39,1	158,8,7
4	21,39,24	158,7,44
5	21,39,43	158,7,44
6	21,40,12	158,7,27
7	21,40,27	158,7,38
8	21,40,45	158,7,21
9	21,40,46	158,6,56
10	21,41,7	158,6,41
11	21,41,29	158,6,16
12	21,41,44	158,6,13
13	21,42,55	158,5,13
14	21,43,54	158,3,58
15	21,44,22	158,3,22
16	21,45,3	158,2,0
17	21,45,15	158,1,19
18	21,45,34	158,0,20
19	21,37,14	157,51,34
20	21,45,34	157,59,17
21	21,45,34	157,58,37
22	21,45,29	157,57,34
23	21,44,55	157,56,18
24	21,44,33	157,55,30
25	21,44,13	157,54,40
26	21,43,33	157,53,45
27	21,41,34	157,53,12
28	21,38,36	157,52,38
29	21,37,54	157,53,3
30	21,37,48	157,52,38
31	21,35,47	157,50,11
32	21,33,48	157,51,58
33	21,37,50	157,52,10
34	21,36,43	157,50,54
Oahu (South)		
1	21,15,38	157,51,1
2	21,14,18	157,42,17
3	21,14,9	157,42,46
4	21,13,27	157,43,13
5	21,13,31	157,43,47
6	21,14,44	157,43,59
7	21,14,47	157,44,24
8	21,14,35	157,44,54
9	21,14,34	157,45,32
10	21,14,11	157,46,52
11	21,14,14	157,47,35
12	21,13,55	157,47,58
13	21,14,0	157,48,28
14	21,14,29	157,48,53
15	21,14,40	157,49,34
16	21,15,0	157,50,16
17	21,15,25	157,50,51
18	21,15,50	157,51,14
19	21,17,8	157,50,54
20	21,18,50	157,39,6
21	21,19,53	157,36,4
22	21,19,34	157,35,6
23	21,18,55	157,34,21
24	21,18,47	157,33,53
25	21,17,52	157,33,21
26	21,17,36	157,33,32
27	21,17,3	157,33,32
28	21,16,34	157,34,3
29	21,15,52	157,34,46

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
30	21,15,56	157,35,19
31	21,15,20	157,35,44
32	21,15,13	157,36,0
33	21,15,22	157,36,57
34	21,15,33	157,38,20
35	21,15,21	157,38,51
36	21,15,20	157,40,5
37	21,15,23	157,40,53
38	21,14,56	157,42,6
Maui		
1	20,51,18	157,44,40
2	20,52,9	157,44,16
3	20,52,37	157,44,38
4	20,52,47	157,45,24
5	20,53,38	157,46,3
6	20,55,27	157,45,21
7	20,56,22	157,45,43
8	20,57,2	157,45,17
9	20,57,36	157,44,31
10	20,59,2	157,44,19
11	20,59,54	157,43,33
12	21,1,19	157,43,14
13	21,1,45	157,42,11
14	21,2,56	157,42,2
15	21,3,7	157,41,32
16	21,3,3	157,40,43
17	21,4,2	157,39,39
18	21,4,49	157,39,57
19	21,5,16	157,39,30
20	21,5,9	157,38,21
21	21,5,20	157,37,59
22	21,5,52	157,37,54
23	21,6,48	157,36,30
24	21,7,34	157,35,24
25	21,8,11	157,33,41
26	21,8,56	157,33,1
27	20,57,10	157,33,16
28	20,56,33	157,33,42
29	20,55,10	157,33,45
30	20,53,29	157,37,14
31	20,51,57	157,40,53
32	20,51,40	157,42,12
33	20,50,56	157,42,54
34	20,58,18	157,22,27
35	21,0,19	157,19,45
36	21,1,25	157,18,43
37	21,1,7	157,19,36
38	21,0,44	157,20,30
39	21,0,0	157,19,0
40	20,59,29	157,19,28
41	20,59,29	157,20,57
42	20,59,55	157,21,29
43	21,0,38	157,21,26
44	21,0,23	157,21,57
45	21,0,16	157,22,41
46	21,0,28	157,23,29
47	21,0,26	157,24,32
48	21,0,3	157,25,23
49	20,59,24	157,25,20
50	20,58,53	157,25,47
51	20,58,50	157,26,21
52	20,58,22	157,25,22
53	20,58,49	157,23,17
54	20,58,43	157,21,50
55	20,58,11	157,23,46

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
56	20,57,56	157,26,49
57	20,57,59	157,28,30
58	20,57,51	157,29,44
59	20,57,25	157,31,42
60	20,56,32	157,29,51
61	20,56,1	157,29,56
62	20,55,54	157,31,46
63	21,17,9	157,17,24
64	21,9,41	157,31,30
65	21,9,58	157,30,9
66	21,9,58	157,29,39
67	21,9,29	157,28,36
68	21,9,33	157,27,5
69	21,10,2	157,23,53
70	21,10,51	157,21,43
71	21,12,41	157,19,17
72	21,14,54	157,18,44
73	21,16,42	157,18,25
74	21,17,13	157,16,13
75	21,16,35	157,14,39
76	21,16,2	157,13,14
77	21,3,36	157,10,57
78	21,3,41	157,11,50
79	21,3,13	157,12,22
80	21,2,25	157,12,51
81	21,2,7	157,13,43
82	21,1,51	157,14,11
83	21,1,59	157,14,37
84	21,1,56	157,15,12
85	21,1,36	157,16,5
86	21,1,42	157,17,0
87	21,1,16	157,17,27
88	21,0,51	157,18,8
89	21,0,59	157,18,35
90	21,3,21	157,3,59
91	20,53,46	157,5,35
92	20,54,59	157,5,28
93	20,55,29	157,5,31
94	20,56,31	157,4,8
95	20,56,58	157,3,32
96	20,57,37	157,2,45
97	20,58,22	157,2,7
98	20,58,40	157,1,28
99	20,59,26	157,1,14
100	21,0,24	157,1,25
101	21,1,15	157,1,30
102	21,1,50	157,1,59
103	21,2,20	157,2,19
104	21,3,0	157,3,4
105	21,3,6	157,4,51
106	21,3,41	157,6,17
107	21,3,9	157,8,46
108	21,3,29	157,10,22
109	21,15,48	157,11,4
110	21,15,27	157,9,24
111	21,15,2	157,8,29
112	21,14,23	157,6,12
113	21,13,56	157,5,10
114	21,13,55	157,4,25
115	21,13,47	157,4,1
116	21,13,7	157,3,25
117	21,13,38	157,2,54
118	21,13,35	157,1,42
119	21,13,1	157,1,2
120	21,13,10	157,0,15
121	21,12,43	156,59,54
122	21,13,22	156,59,8

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
123	21,13,46	156,58,25
124	21,13,14	156,57,40
125	20,49,18	157,1,5
126	20,44,4	156,48,49
127	20,43,18	156,45,48
128	20,43,44	156,46,17
129	20,43,41	156,47,27
130	20,44,42	156,48,49
131	20,44,23	156,49,38
132	20,44,23	156,51,9
133	20,43,37	156,51,54
134	20,44,19	156,47,48
135	20,43,6	156,52,31
136	20,42,16	156,53,12
137	20,42,39	156,54,43
138	20,42,47	156,56,25
139	20,42,54	156,57,39
140	20,43,56	156,59,6
141	20,45,16	157,0,3
142	20,46,37	157,0,48
143	20,47,38	157,0,40
144	20,50,43	157,2,39
145	20,51,53	157,4,27
146	20,52,31	157,4,58
147	21,12,49	156,43,45
148	21,11,36	156,53,20
149	21,12,38	156,56,44
150	21,12,1	156,56,8
151	21,12,7	156,55,3
152	21,12,5	156,54,17
153	21,11,36	156,54,2
154	21,12,3	156,52,56
155	21,11,48	156,52,6
156	21,12,7	156,51,38
157	21,11,40	156,51,34
158	21,11,59	156,50,44
159	21,12,30	156,49,55
160	21,12,26	156,49,26
161	21,12,15	156,48,37
162	21,12,22	156,47,56
163	21,11,52	156,47,27
164	21,12,34	156,46,42
165	21,13,16	156,45,40
166	21,13,32	156,45,3
167	21,13,1	156,44,26
168	21,12,30	156,43,4
169	21,11,56	156,42,56
170	21,12,11	156,41,58
171	21,11,59	156,41,5
172	21,11,13	156,39,51
173	21,10,31	156,39,30
174	21,8,6	156,40,32
175	21,7,8	156,40,11
176	20,36,4	156,29,59
177	20,38,57	156,34,30
178	20,39,50	156,35,32
179	20,40,33	156,36,5
180	20,41,22	156,36,34
181	20,42,5	156,36,54
182	20,42,12	156,38,0
183	20,42,51	156,39,38
184	20,43,14	156,41,1
185	20,43,33	156,42,11
186	20,44,11	156,42,31
187	20,43,52	156,43,25
188	20,41,22	156,42,31
189	20,41,3	156,43,0

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
190	20,42,12	156,44,22
191	20,43,2	156,44,43
192	21,0,44	156,18,53
193	21,4,31	156,37,39
194	21,4,31	156,35,32
195	21,3,41	156,33,57
196	21,2,5	156,31,13
197	21,1,4	156,27,27
198	21,1,15	156,22,39
199	21,0,44	156,21,34
200	21,1,0	156,18,8
201	20,33,7	156,23,38
202	20,36,3	156,10,43
203	20,35,46	156,13,13
204	20,35,11	156,14,55
205	20,34,4	156,16,39
206	20,33,28	156,17,29
207	20,33,49	156,19,24
208	20,33,36	156,20,59
209	20,33,18	156,22,7
210	20,35,8	156,27,59
211	20,33,46	156,26,9
212	20,36,27	156,28,24
213	20,36,31	156,28,57
214	20,35,53	156,28,41
215	20,59,43	156,16,25
216	20,58,42	156,13,53
217	20,54,32	156,9,10
218	20,54,21	156,8,16
219	20,53,8	156,6,17
220	20,51,25	156,5,7
221	20,51,5	156,4,18
222	20,50,35	156,3,57
223	20,49,56	156,1,50
224	20,48,43	156,0,52
225	20,48,40	155,59,55
226	20,48,1	155,58,53
227	20,37,34	156,4,45
228	20,47,11	155,58,0
229	20,46,22	155,57,35
230	20,45,24	155,57,23
231	20,44,30	155,57,15
232	20,42,58	155,57,6
233	20,41,38	155,58,20
234	20,40,50	155,59,12
235	20,40,5	155,59,51
236	20,39,35	156,0,54
237	20,38,46	156,1,46
238	20,38,0	156,2,24
239	20,37,37	156,3,23
240	20,37,29	156,5,49
241	20,36,39	156,6,50
242	20,36,21	156,7,54
243	20,35,59	156,8,55
244	20,53,1	157,38,48
245	20,54,7	157,35,43
246	20,56,28	157,32,7
247	20,58,27	157,24,17
248	20,58,3	157,25,19
249	21,3,24	157,7,44
250	20,55,55	157,30,55
251	20,50,44	157,2,9
252	21,1,8	156,24,34
253	20,34,31	156,26,58
254	20,58,12	156,12,43
255	20,52,7	157,40,28
256	20,54,59	157,34,4

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Big Island (Hawaii)		
1	19,33,54	156,0,19
2	19,34,42	156,0,33
3	19,35,21	156,0,35
4	19,39,49	156,2,29
5	19,43,34	156,4,26
6	19,46,7	156,5,57
7	19,47,17	156,6,34
8	19,48,3	156,6,19
9	19,48,42	156,6,28
10	19,51,28	156,4,33
11	19,53,15	156,2,25
12	19,55,43	155,58,13
13	19,53,47	156,1,26
14	19,54,6	156,1,1
15	19,54,8	156,0,3
16	19,55,8	155,59,14
17	19,56,11	155,57,41
18	19,56,36	155,57,19
19	19,57,19	155,56,44
20	19,57,56	155,56,18
21	19,58,22	155,55,56
22	19,58,39	155,55,2
23	19,58,45	155,54,36
24	19,58,57	155,54,9
25	19,59,15	155,53,37
26	19,59,31	155,52,58
27	20,0,20	155,52,25
28	20,1,4	155,52,25
29	20,1,36	155,52,4
30	20,2,24	155,52,17
31	20,3,14	155,52,25
32	20,5,50	155,54,44
33	19,20,32	155,53,38
34	19,7,28	155,55,34
35	19,9,6	155,55,49
36	19,9,52	155,55,42
37	19,10,57	155,55,16
38	19,12,49	155,54,28
39	19,13,29	155,54,32
40	19,14,22	155,54,24
41	19,15,2	155,54,24
42	19,16,17	155,54,1
43	19,18,0	155,53,47
44	19,19,22	155,53,49
45	19,22,49	155,54,43
46	19,25,22	155,55,33
47	19,26,21	155,55,39
48	19,27,14	155,56,9
49	19,28,41	155,56,42
50	19,29,1	155,57,14
51	19,29,25	155,58,9
52	19,30,23	155,59,3
53	20,15,49	155,43,33
54	20,13,22	155,56,15
55	20,7,10	155,55,14
56	20,9,21	155,55,44
57	20,12,43	155,56,28
58	20,14,41	155,56,12
59	20,15,34	155,55,53
60	20,16,21	155,55,28
61	20,16,47	155,54,54
62	20,17,42	155,53,56
63	20,18,11	155,52,3
64	20,18,9	155,51,28
65	20,17,41	155,49,45
66	20,16,39	155,45,47
67	20,16,23	155,44,18
68	20,14,44	155,43,7
69	20,14,5	155,42,57
70	20,13,54	155,41,55
71	20,12,57	155,41,28
72	20,12,8	155,40,58
73	20,11,32	155,39,37
74	18,51,25	155,41,26
75	18,52,3	155,41,45
76	18,52,36	155,41,44
77	18,53,23	155,41,35
78	18,54,14	155,41,39
79	18,54,42	155,41,28
80	18,55,42	155,41,27
81	18,56,26	155,41,51
82	18,56,41	155,42,16
83	18,57,0	155,42,41
84	18,57,33	155,43,15
85	18,58,7	155,44,2
86	18,58,14	155,44,49
87	18,58,36	155,45,43
88	18,58,56	155,46,16
89	18,59,32	155,47,7
90	19,0,38	155,48,26
91	19,0,49	155,49,37
92	19,1,9	155,50,36
93	19,1,22	155,51,43
94	19,2,4	155,52,58
95	19,2,39	155,53,14
96	19,3,40	155,53,45
97	19,4,52	155,54,50
98	19,5,51	155,55,4
99	18,52,27	155,40,26
100	18,53,12	155,39,32
101	19,3,35	155,32,20
102	19,12,28	155,21,5
103	19,11,47	155,22,47
104	19,10,38	155,25,12
105	19,9,34	155,26,18
106	19,9,4	155,26,31
107	19,8,29	155,27,44
108	19,8,3	155,29,20
109	19,7,5	155,30,35
110	19,6,29	155,31,20
111	19,5,36	155,32,6
112	19,4,35	155,32,19
113	19,2,52	155,32,48
114	19,1,15	155,34,29
115	19,0,24	155,34,57
116	18,59,29	155,35,28
117	18,58,17	155,35,37
118	19,1,53	155,33,29
119	18,57,6	155,36,16
120	18,56,15	155,36,46
121	18,55,15	155,37,19
122	18,54,31	155,38,32
123	20,4,41	155,21,53
124	20,10,40	155,38,43
125	20,10,23	155,38,3
126	20,9,50	155,37,34
127	20,9,53	155,37,15
128	20,9,23	155,36,14
129	20,8,46	155,34,38
130	20,8,49	155,34,0
131	20,8,13	155,32,46
132	20,8,13	155,31,23
133	20,7,40	155,29,41
134	20,7,6	155,27,29
135	20,6,45	155,26,3
136	20,6,9	155,24,40
137	20,5,29	155,23,10
138	20,3,59	155,20,4
139	19,17,53	155,5,13
140	19,15,52	155,8,36
141	19,14,52	155,10,31
142	19,14,57	155,11,7
143	19,15,4	155,11,39
144	19,14,58	155,11,50
145	19,15,1	155,12,18
146	19,15,15	155,12,55
147	19,15,9	155,13,28
148	19,15,32	155,14,10
149	19,15,31	155,14,55
150	19,15,50	155,15,42
151	19,15,55	155,16,18
152	19,15,29	155,17,1
153	19,15,42	155,17,30
154	19,14,37	155,18,51
155	19,13,55	155,20,10
156	20,3,22	155,18,51
157	20,1,48	155,15,39
158	19,59,17	155,11,13
159	19,58,42	155,10,31
160	19,57,40	155,0,0
161	19,56,17	155,7,57
162	19,55,18	155,6,35
163	19,54,1	155,5,14
164	19,52,12	155,3,54
165	19,51,0	155,3,25
166	19,49,52	155,3,25
167	19,48,56	155,3,5
168	19,45,25	154,58,59
169	19,48,15	155,2,14
170	19,47,49	155,2,33
171	19,47,21	155,2,7
172	19,47,6	155,1,27
173	19,46,37	155,1,0
174	19,46,20	155,0,39
175	19,46,0	154,59,28
176	19,44,37	154,58,34
177	19,44,14	154,58,33
178	19,43,15	154,58,30
179	19,42,40	154,58,9
180	19,41,52	154,58,12
181	19,41,34	154,57,43
182	19,41,13	154,57,17
183	19,40,39	154,57,24
184	19,39,54	154,57,24
185	19,39,27	154,56,58
186	19,39,15	154,56,49
187	19,38,38	154,56,55
188	19,38,17	154,56,58
189	19,37,13	154,56,10
190	19,33,26	154,52,7
191	19,35,24	154,55,6
192	19,34,18	154,53,24
193	19,33,2	154,50,56
194	19,32,35	154,49,4
195	19,31,49	154,48,13
196	19,30,49	154,48,4
197	19,29,42	154,48,23
198	19,28,51	154,48,58
199	19,28,14	154,49,31

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
200	19,27,52	154,49,57
201	19,27,15	154,50,25
202	19,26,37	154,51,21
203	19,23,48	154,55,11
204	19,22,57	154,56,10
205	19,21,23	154,57,50
206	19,19,34	155,1,22

Ports and Harbor Exclusions
(Points mark outer boundary of harbors)

Ala Wai Harbor (Oahu)		
1	21,17,5	157,50,55
2	21,17,2	157,50,34
Hilo Bay (Big Island)		
1	19,44,37	155,5,35
2	19,44,44	155,4,40
Honokohau Harbor (Big Island)		
1	19,40,23	156,1,50
2	19,40,11	156,1,56
Kawaihae Harbor (Big Island)		
1	20,2,25	155,50,12
2	20,2,36	155,50,7
Keauhou Bay (Big Island)		
1	19,33,43	155,58,8
2	19,34,2	155,58,9
Kahului Harbor (Maui)		
1	20,54,12	156,28,36
2	20,54,13	156,28,28
Lahaina Harbor (Maui)		
1	20,52,29	156,40,54
2	20,52,29	156,40,53
Maalea Harbor (Maui)		
1	20,47,36	156,30,49
2	20,47,42	156,30,44
Hale o Lono Harbor (Molokai)		
1	21,5,15	157,15,8
2	21,5,15	157,15,5
Kaunakakai Harbor (Molokai)		
1	21,5,25	157,1,46
2	21,5,0	157,2,8
3	21,4,49	157,1,51
4	21,5,18	157,1,25
Kaumalapau Harbor (Lanai)		
1	20,47,12	156,59,41
2	20,47,19	156,59,42
Manele Harbor (Lanai)		
1	20,44,46	156,53,24
2	20,44,44	156,53,22
Hanamaula Bay (Kauai)		
1	21,59,49	159,20,6
2	22,0,3	159,20,8
Nawiliwili Harbor (Kauai)		
1	21,57,3	159,21,3

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
2	21,57,29	159,20,20

[FR Doc. 97–7811 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8711]

RIN 1545–AU82

Intangibles Under Sections 1060 and 338; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (TD 8711) which were published in the **Federal Register** on Thursday, January 16, 1997 (62 FR 2267). The temporary regulations relate to the purchase price allocations in taxable asset acquisitions and deemed asset purchases.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Brendan P. O'Hara, (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 1060 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8711) contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8711) which are the subject of FR Doc. 97–656 is corrected as follows:

§ 1.1060–1T [Corrected]

On page 2272, column 3, in amendatory ''**Par. 6**.'', item 2, line 2, the language ''outline of topics entries for (a)(2), (b)(2)'' is corrected to read ''outline of topics entries for (a)(2), (d)(2)''.

Cynthia E. Grigsby,

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

[FR Doc. 97–7945 Filed 3–27–97; 8:45 am]

BILLING CODE 4830–01–U

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; extension of sunset provision.

SUMMARY: The Occupational Safety and Health Review Commission has determined that additional time is necessary to properly evaluate the efficacy of its pilot E–Z Trial program. Accordingly, the Review Commission is amending the ''sunset'' provisions of the Commission's ''E–Z Trial'' rules to extend the pilot program an additional four months.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606–5410.

SUPPLEMENTARY INFORMATION: On August 14, 1995 the Occupational Safety and Health Review Commission published in the **Federal Register** (60 FR 41805) new procedural rules for a pilot program designed to simplify and accelerate adjudication for cases that warrant a less formal, less costly process. Designated ''E–Z Trial,'' the pilot program was to run for one year, terminating on September 30, 1996. A ''sunset'' provision was inserted into the rules to end the pilot program on that date unless extended by the Commission by final rule published in the **Federal Register.** 29 CFR 2200.201(b). On September 27, 1996 the Commission extended the sunset provision until March 31, 1997 to allow for evaluation of the pilot program (61 FR 50711). During this period, the Commission held forums in which parties and representatives of parties who had participated in E–Z Trial proceedings were given the opportunity to comment on the E–Z Trial process. Their comments, together with the experiences of Commission judges, who have conducted the E–Z Trials, are currently being evaluated by the Commission. To allow for a full evaluation of these comments and experiences, the Commission has

determined that the sunset provision should be extended an additional four months, until July 31, 1997. Accordingly, the Commission is revising § 2200.201(b) to extend the pilot program through July 31, 1997.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, title 29, chapter XX, part 2200, subpart M of the Code of Federal Regulations is amended as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g), unless otherwise noted.

2. Section 2200.201 is amended by revising paragraph (b) to read as follows:

§ 2200.201 [Amended]

* * * * *

(b) *Sunset Provision.* Section 2200.203(a), which permits the Chief Administrative Law Judge to assign a case for E–Z Trial, will no longer be effective after July 31, 1997 unless the rule is extended by the Commission by publication of a final rule in the **Federal Register.** After July 31, 1997, a case will only be assigned to E–Z Trial if the assignment is requested by a party.

Dated: March 21, 1997.

Stuart E. Weisberg,

Chairman.

Dated: March 24, 1997.

Velma Montoya,

Commissioner.

Dated: March 21, 1997.

Daniel Guttman,

Commissioner.

[FR Doc. 97–7845 Filed 3–27–97; 8:45 am]

BILLING CODE 7600–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI75

Delegation of Authority to Deputy General Counsel and Assistant General Counsel for Professional Staff Group IV in Matters Concerning Employee Inventions and Patents

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations in 38 CFR Part 1 by amending the delegation of authority for making determinations regarding right, title and interest in employee inventions. The General Counsel has determined that these Departmental determinations could be made more efficiently by including the Assistant General Counsel as an official authorized to make such decisions. In accordance with 38 U.S.C. 512, this document delegates to the Assistant General Counsel for Professional Staff Group IV the same authority and responsibility to act for VA as was previously granted to the General Counsel and Deputy General Counsel.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Neal C. Lawson, Assistant General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6356.

SUPPLEMENTARY INFORMATION: This final rule consists of a delegation of authority and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule merely consists of a delegation of authority.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

Approved: March 4, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. § 501(a), unless otherwise noted.

2. Section 1.653 is revised to read as follows:

§ 1.653 Delegation of authority.

The General Counsel, Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV is authorized to act for the Secretary of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention as between the Government and the employee where there is no cooperative research and development agreement shall be made by the General Counsel, Deputy General Counsel or the Assistant General Counsel for Professional Staff Group IV, in accordance with 37 CFR part 500.

§ 1.164 [Amended]

3. In § 1.654, the first sentence is revised by adding ''Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV,'' following ''General Counsel,''.

§ 1.657 [Amended]

4. Section 1.657 is revised by adding '', Deputy General Counsel or Assistant General Counsel for Professional Staff Group IV'' following ''The General Counsel''.

[FR Doc. 97–7834 Filed 3–27– 97; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AI40

Upgraded Discharges

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document makes nonsubstantive changes to the Department of Veterans Affairs (VA) adjudication regulations regarding upgraded discharges. The intended effect of these changes is to make the regulations simpler and easier to understand.

EFFECTIVE DATE: This amendment is effective March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Laurence Freiheit, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7252.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1110 authorizes the Secretary of Veterans Affairs to compensate veterans for disability resulting from injury or disease incurred or aggravated during active military service provided that the veteran was discharged or released under conditions other than

dishonorable from the period of service in which the injury or disease was incurred. 38 U.S.C. 1521(a) authorizes the Secretary to pay non-service-connected disability pension to certain veterans who are permanently and totally disabled from non-service-connected disability.

Regulations at 38 CFR 3.12 implement two distinct statutory provisions governing entitlement to most benefits administered by VA. One provision, 38 U.S.C. 101(2), defines the term ''veteran'' for purposes of establishing entitlement to benefits as a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. The other, 38 U.S.C. 5303, bars the payment of VA benefits to individuals discharged under certain listed circumstances regardless of how they fare under the statutory definition of veteran.

Paragraphs 3.12(g) and (h) implement provisions of Public Law 95–126, enacted on October 8, 1977, concerning the effect of certain discharge upgrades and discharge review programs on the definition of veteran and the statutory bars to benefits. This document reorganizes the material in paragraphs (g) and (h) into a format that is simpler to read and understand. The changes are not substantive.

Since these amendments merely reorganize and simplify the current regulation and are not substantive in nature, this change is being promulgated without regard to notice and comment and effective date provisions of 5 U.S.C. 553.

Because no notice of proposed rulemaking was required with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act, 5 U.S.C. 601–612. Even so, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: March 14, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.12, paragraphs (g) and (h) are revised and an authority citation is added to paragraph (h) to read as follows:

§ 3.12 Character of discharge.

* * * * *

(g) An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553, sets aside a bar to benefits imposed under paragraph (d), but not paragraph (c), of this section provided that:

(1) The discharge is upgraded as a result of an individual case review;

(2) The discharge is upgraded under uniform published standards and procedures that generally apply to all persons administratively discharged or released from active military, naval or air service under conditions other than honorable; and

(3) Such standards are consistent with historical standards for determining honorable service and do not contain any provision for automatically granting or denying an upgraded discharge.

(h) Unless a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis that the discharge would be upgraded under uniform standards meeting the requirements set forth in paragraph (g) of this section, an honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed under this section:

(1) The President's directive of January 19, 1977, implementing Presidential Proclamation 4313 of September 16, 1974; or

(2) The Department of Defense's special discharge review program effective April 5, 1977; or

(3) Any discharge review program implemented after April 5, 1977, that does not apply to all persons administratively discharged or released from active military service under other than honorable conditions.

(Authority: 38 U.S.C. 5303 (e))

* * * * *

[FR Doc. 97–7835 Filed 3–27–97; 8:45 am]

BILLING CODE 8320–01–P

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38 CFR Part 21

RIN 2900–AI55

Veterans Education: Increase in Rates Payable Under the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to veterans and servicemembers under the Montgomery GI Bill—Active Duty must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Active Duty for fiscal year 1997 (October 1, 1996, through September 30, 1997) are changed to show a 2.7% increase in these rates. Furthermore, the Veterans' Benefits Improvements Act of 1996 provides that the lower rate of educational assistance payable to veterans pursuing cooperative training was abolished for most veterans training under the Montgomery GI Bill—Active Duty effective October 9, 1996. They will be paid at the same rate as those veterans pursuing residence training. The regulations are changed to conform to statutory requirements.

DATES: This final rule is effective March 28, 1997. However, the changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 273–7187.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 38 U.S.C. 3015(g) for fiscal year 1997, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty payable to students pursuing a program of education full time must be increased by the percentage that the total of the monthly Consumer Price Index-W for July 1, 1995, through June 30, 1996, exceeds the total of the monthly Consumer Price Index-W for July 1, 1994, through June 30, 1995. This is 2.7%.

It should be noted that some veterans will receive an increase in monthly

payments that will be less than 2.7%. The increase does not apply to additional amounts payable by the Secretary of Defense to individuals with skills or a specialty in which there is a critical shortage of personnel (so-called ''kickers''). It does not apply to amounts payable for dependents. Veterans who previously had eligibility under the Vietnam Era GI Bill receive monthly payments that are in part based upon basic educational assistance and in part based upon the rates payable under the Vietnam Era GI Bill. Only that portion attributable to basic educational assistance is increased by 2.7%.

Although 38 U.S.C. 3015(g) requires only that the full-time rates be increased, these revisions include increases for other training also. Monthly rates payable to veterans in apprenticeship or other on-job training are set by statute at a given percentage of the full-time rate. Hence, any rise in the full-time rate automatically requires an increase in the rates for such training.

38 U.S.C. 3015 (a) and (b) require that the Department of Veterans Affairs (VA) pay part-time students at appropriately reduced rates. Since the first student became eligible for assistance under the Montgomery GI Bill—Active Duty in 1985, VA has paid three-quarter-time students and one-half-time students at 75% and 50% of the full-time rate, respectively. Students pursuing a program of education at less than one-half but more than one-quarter-time have had their payments limited to 50% or less of the full-time rate. Similarly, students pursuing a program of education at one-quarter-time or less have had their payments limited to 25% or less of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

Before the enactment on October 9, 1996, of the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104–275), a veteran pursuing a cooperative course under the Montgomery GI Bill—Active Duty was paid educational assistance at 80% of the monthly rate payable to a similarly circumstanced veteran in residence training, provided he or she was not previously eligible for educational assistance under the Vietnam Era GI Bill. This statutory provision was reflected in the regulations. The Veterans' Benefits Improvements Act of 1996 eliminated this different rate so that, effective October 9, 1996, veterans in cooperative training who were not previously eligible for educational assistance under the Vietnam Era GI Bill receive the same monthly rate as veterans in residence training. However, veterans training under the Montgomery GI Bill—Active Duty who were previously eligible under the Vietnam Era GI Bill receive educational assistance that is in part based upon the rates payable under the Vietnam Era GI Bill. Since a lower rate was payable for cooperative training under the Vietnam Era GI Bill than was payable for residence training, there will continue to be a lower rate payable under the Montgomery GI Bill—Active Duty to these veterans for cooperative training. 38 CFR 21.7136 and 21.7137 are changed accordingly.

Nonsubstantive changes also are made for the purpose of clarity.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied retroactively from October 1, 1996, or October 9, 1996, as respectively set out in the regulations, in accordance with the applicable statutory provisions discussed above.

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and does not directly affect small entities. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 27, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR part 21 (subpart K) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K, is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7136, paragraphs (b), (c)(1), (c)(2), (c)(3), (d)(1) introductory text, (d)(2) introductory text, (d)(5), (d)(6), and (f)(3) are revised, to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

* * * * *

(b) *Rates.* (1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable for training that occurs after September 30, 1996, and before October 1, 1997, to a veteran whose service is described in paragraph (a) of this section is the rate stated in the following table.

Training	Monthly rate
Full time	$427.87
¾ time	320.90
½ time	213.94
Less than ½ but more than ¼ time	213.94
¼ time or less	106.97

(Authority: 38 U.S.C. 3015)

(2) If a veteran's service is described in paragraph (a) of this section, the monthly rate payable to the veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1996, and before October 1, 1997, is the rate stated in the following table.

Training period	Monthly rate
First six months of pursuit of training	$320.90
Second six months of pursuit of training	235.33
Remaining pursuit of training	149.75

(Authority: 38 U.S.C. 3015, 3032(c))

(3) If a veteran's service is described in paragraph (a) of this section, the monthly rate of basic educational assistance payable to the veteran for pursuit of a cooperative course is:

(i) $342.30 for training that occurs after September 30, 1996, and before October 9, 1996; and

(ii) $427.87 for training that occurs on or after October 9, 1996.

(Authority: 38 U.S.C. 3015)

(c) * * *

(1) Except as elsewhere provided in this section or in § 21.7139, the monthly rate of basic educational assistance payable to a veteran for training that occurs after September 30, 1996, and before October 1, 1997, is the rate stated in the following table.

Training	Monthly rate
Full time	$347.65
¾ time	260.74
½ time	173.83
Less time ½ but more than ¼ time	173.83
¼ time or less	86.91

(Authority: 38 U.S.C. 3015, 3032(c))

(2) The monthly rate of educational assistance payable to a veteran for pursuit of apprenticeship or other on-job training that occurs after September 30, 1996, and before October 1, 1997, is the rate stated in the following table.

Training period	Monthly rate
First six months of pursuit of training	$260.74
Second six months of pursuit of training	191.21
Remaining pursuit of training	121.68

(Authority: 38 U.S.C. 3015, 3032(c))

(3) The monthly rate of basic educational assistance payable to a veteran for pursuit of a cooperative course is:

(i) $278.12 for training that occurs after September 30, 1996, and before October 9, 1996; and

(ii) $347.65 for training that occurs on or after October 9, 1996.

(Authority: 38 U.S.C. 3015)

(d) * * *

(1) For individuals, other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training, it may not exceed:

* * * * *

(2) For individuals who first become members of the Armed Forces after November 28, 1989 (other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training), it may not exceed:

* * * * *

(5) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed $320 per month for training received before October 9, 1996.

(6) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed $560 per month for training received before October 9, 1996.

(Authority: Sec. 108(a)(2), Pub. L. 100–689, 102 Stat. 4170; Sec. 5(a), Pub. L. 102–83, 105 Stat. 406)

* * * * *

(f) * * *

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (e)(2)(i) of this section by .8 for training received before October 9, 1996.

* * * * *

3. In § 21.7137, paragraph (c)(2) introductory text is amended by removing ''1995, and before October 1, 1996'' and adding, in its place, ''1996, and before October 1, 1997''; paragraph (c)(2)(i) is amended by removing ''$604.62'' and adding, in its place, ''$615.87''; paragraph (c)(2)(ii) is amended by removing ''$453.96'' and adding, in its place, ''$462.40''; paragraph (c)(2)(iii) is amended by removing ''$302.31'' and adding, in its place, ''$309.94''; paragraph (c)(2)(iv) is amended by removing ''$151.15'' and adding, in its place, ''$153.97''; and paragraphs (a)(1), (a)(2), (d)(1) introductory text, and (d)(3) are revised and paragraph (a)(3) is added, to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. ch. 34.

(a) *Minimum rates.* (1) Except as elsewhere provided in this section, the monthly rate of basic educational assistance for training that occurs after September 30, 1996, and before October 1, 1997, is the rate stated in the following table.

Training	Monthly rate			
	No. dependents	One dependent	Two dependents	Additional for each additional dependent
Full time	$615.87	$651.87	$682.87	$16.00
¾ time	462.40	488.90	512.40	12.00
½ time	309.94	325.94	341.44	8.50
Less than ½ but more than ¼ time	309.94	.....	.....	.....
¼ time or less	153.97	.....	.....	.....

(Authority: 38 U.S.C. 3015 (e), (f), and (g))

(2) For veterans pursuing apprenticeship or other on-job training, the monthly rate of basic educational assistance for training that occurs after September 30, 1996, and before October 1, 1997, is the rate stated in the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
1st six months of pursuit of program	$423.66	$436.03	$446.90	$5.25
2nd six months of pursuit of program	291.70	301.05	308.75	3.85
3rd six months of pursuit of program	173.55	179.68	184.40	2.45

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Remaining pursuit of program	161.65	167.43	172.68	2.45

(Authority: 38 U.S.C. 3015(e), (f), (g))

(3) The monthly rate payable to a veteran who is pursuing a cooperative course is the rate stated in the following table.

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Oct. 1, 1996–Oct. 8, 1996	$463.90	$484.30	$503.90	$9.20
On or after Oct. 9, 1996	579.87	605.37	629.87	11.50

(Authority: 38 U.S.C. 3015)

* * * * *

(d) * * *

(1) For individuals, other than those pursuing cooperative training before October 9, 1996, or apprenticeship or other on-job training, it may not exceed:

* * * * *

(3) For individuals pursuing cooperative training, it may not exceed $320 per month for training received before October 9, 1996.

(Authority: Sec. 108(a)(2), Pub. L. 100–689, 102 Stat. 4170; sec. 5(a), Pub. L. 102–83, 105 Stat. 406)

* * * * *

[FR Doc. 97–7832 Filed 3–27–97; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual: Availability and Publication

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises and updates references to organizational names of Postal Service administrative units in title 39, Code of Federal Regulations, part 111, that relate to the Domestic Mail Manual. The Postal Service publishes its rules and procedures for domestic mail preparation, mail classification, postage rates and fees, and other mailing requirements in the Domestic Mail Manual, which is incorporated by reference in 39 CFR part 111.

This rule also sets the publishing procedures for announcing all changes to the Domestic Mail Manual and identifies the two documents used to record those changes, both as interim and final regulations published in the **Federal Register** and as minor changes published in the Postal Bulletin outside the rulemaking process. In addition, references to subscription and frequency of issuance of the Domestic Mail Manual are revised.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Neil Berger, (202) 268–2859.

SUPPLEMENTARY INFORMATION: To make the Domestic Mail Manual more accessible and more usable for postal customers, the Postal Service redesigned the layout and reorganized the content of the document after many months of consultation with postal customers and postal employees. The result of this work was Domestic Mail Manual Issue 46, released on July 1, 1993. Subsequent issues of the Domestic Mail Manual have continued the general design and editorial style of Issue 46, with further refinements such as a series of reference guides and a separate 10-panel rate table identified as Notice 123, Ratefold.

The current Domestic Mail Manual, now printed in a looseleaf format with tab dividers, evolved from a bound document printed and distributed quarterly in March, June, September, and December each year. Other than changes to postal rates and fees based on filings with the Postal Rate Commission, the implementation date for most changes to mailing standards was generally the issue date of the quarterly publication of that former style of the Domestic Mail Manual. Summaries of these changes were announced in the Postal Bulletin describing which standards were to be revised before the printing and distribution of the Domestic Mail Manual.

Although this process appeared to give mailers and employees adequate time for preparation, training, and implementation of the changes, the publication of only summaries and not the complete implementing text was inadequate for mailers who used computerized methods to sort their mail. Those mailers, as well as software developers, needed to review and interpret the complete text and incorporate the changes into their software and mailing operations before the effective date of the next issue of the Domestic Mail Manual. As a consequence, the Postal Service in 1991 began publishing the full text to all Domestic Mail Manual changes.

Many changes in mail preparation standards that began in the mid-1980s, and have continued to the present time, came from the transition from manual and mechanized sorting methods to largely automated methods that relied on optical character recognition and other forms of computerized technology. As technology for mail processing improved, the rate of change to mail preparation standards and the expected consequences from those changes eroded the quarterly cycle of announcement followed by publication of the Domestic Mail Manual. For most mailers, the value and significance of changes for better service outweighed maintaining a schedule of changes tied to a rigid publication cycle.

After the major shift to automation rates in 1991, the Postal Service began to implement changes at an even faster pace than envisioned in the 1980s. Some changes came about to upgrade operational networks and match

processes to machines that were installed. Other changes occurred to meet a wider range of mailer requirements for enhanced services and for new products.

Now that mail preparation and mail processing have reached the point of near dependence on computer-controlled technology, the Postal Service recognizes the need to ensure proper, efficient, and widespread announcement of all significant changes to mail preparation standards. Part of this process is to establish a central place where all changes are published, codified, stored, and made available to the greatest number of mailers while allowing flexibility in implementation.

The **Federal Register**, as appropriate, issued each workday by the Office of the Federal Register, and the Postal Bulletin, issued every 2 weeks by the Postal Service, will serve as the two official places to announce changes to the Domestic Mail Manual.

As the Postal Service amends or revises rules and procedures in the Domestic Mail Manual, it generally publishes notices in the **Federal Register** for public comment on proposed rules for changes to rates, classification, and certain significant mailing requirements. These proposed rules are then followed by notices of the final rules and responses to comments from the public. From time to time, the Postal Service publishes final rules in the **Federal Register** without initially soliciting public comment.

Typographical corrections, nonsubstantive changes, and minor amendments to mail preparation standards are officially published and recorded in the Postal Bulletin, the biweekly document issued by the Postal Service to announce changes to policies and procedures in all six of its policy manuals: Administrative Support Manual, Domestic Mail Manual, Employee and Labor Relations Manual, Finance Management Manual, International Mail Manual, and Postal Operations Manual. As an immediate reference for readers and mailers who do not receive or subscribe to the **Federal Register**, the mail preparation standards contained in the final rules published in the **Federal Register** that amend the Domestic Mail Manual are also published in the Postal Bulletin.

After an official announcement is published in the **Federal Register** or in the Postal Bulletin to amend or revise the Domestic Mail Manual, other printed and electronic means supported by the Postal Service may also be used to broadcast these changes and support customer requirements between issues of the Domestic Mail Manual. The following final rule revising title 39, Code of Federal Regulations, part 111, provides the basis for the Postal Service to administer that process.

List of Subjects in 39 CFR Part 111

Postal Service.

In consideration of the foregoing, 39 CFR part 111 is amended as set forth below:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Section 111.1 is revised to read as follows:

§ 111.1 Domestic Mail Manual; incorporated by reference of regulations governing domestic mail services.

Section 552(a) of title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, and with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference in this part, the Domestic Mail Manual, a looseleaf document published twice each year in January and July, unless otherwise determined by the Postal Service.

3. Section 111.2 is revised to read as follows:

§ 111.2 Availability of the Domestic Mail Manual.

(a) Copies of the Domestic Mail Manual, both current and previous issues, are available during regular business hours for reference and public inspection at the U.S. Postal Service Library, National Headquarters in Washington, DC. Copies of only the current issue are available during regular business hours for public inspection at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches.

(b) A copy of the current Domestic Mail Manual is on file with the Director, Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) A 1-year subscription to the Domestic Mail Manual for two consecutive issues can be purchased by the public from the Superintendent of Documents, Washington, DC 20402–9375.

4. Section 111.3 is amended by revising paragraphs (a) through (d), by redesignating paragraph (e) as paragraph (f) by revising the introductory text of newly redesignated paragraph (f) and entries 44 through 51 in the table in the newly redesignated paragraph (f) and adding a new paragraph (e) to read as follows:

§ 111.3 Amendments to the Domestic Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, only notices rather than complete text of changes made to the Domestic Mail Manual are published in the **Federal Register**. These notices are published in the form of one summary transmittal letter for each issue of the Domestic Mail Manual. A complete issue of the Domestic Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the Domestic Mail Manual receive the latest issue of the Domestic Mail Manual from the Government Printing Office.

(b) When the Postal Service invites comments from the public on a proposed change to the Domestic Mail Manual, the proposed change and, if adopted, the full text of the interim or the final regulation is published in the **Federal Register**.

(c) The Postal Bulletin contains the full text of all interim and final regulations published as provided in paragraph (b) of this section, and the full text of all other changes to the Domestic Mail Manual that are summarized in the notices published under paragraph (a) of this section, except for nonsubstantive changes and corrections of typographical errors. The Postal Bulletin is a biweekly document issued by the Postal Service to amend and revise policies and procedures. A 1-year subscription to the Postal Bulletin and certain back copies can be purchased by the public from the Superintendent of Documents, Washington, DC 20402–9371.

(d) Interim regulations published in full text or referenced as provided in paragraphs (b) and (c) of this section, are published, as appropriate, in the Domestic Mail Manual in full text or referenced at the place where they would appear if they become final regulations.

(e) Announcements of changes to the Domestic Mail Manual not published in the **Federal Register** as provided in

paragraphs (a) and (b) of this section and not published in the Postal Bulletin as provided in paragraph (c) are not deemed final under the provisions of this part 111.

(f) For references to amendments to the Domestic Mail Manual adopted under paragraph (b) of this section after issuance of the most recent transmittal letter (termed Summary of Changes in the Domestic Mail Manual) listed below, see § 111.3 in the List of CFR Sections affected at the end of this volume.

* * * * *

Transmittal letter for issue	Dated	FEDERAL REGISTER publication
*	*	* * *
44	September 20, 1992.	61 FR 67218
45	December 20, 1992.	61 FR 67218
46	July 1, 1993	61 FR 67218
47	April 10, 1994	61 FR 67218
48	January 1, 1995.	61 FR 67218
49	September 1, 1995.	61 FR 67218
50	July 1, 1996	61 FR 60190
51	January 1, 1997.	61 FR 64618

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–7862 Filed 3–27–97; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 32

[CGD 90–071]

RIN 2115–AD69

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard establishes minimum performance standards for tank level or pressure monitoring devices for single-hull tank vessels that carry oil in bulk as cargo. The purpose of these devices is to reduce the size and impact of an oil spill by alerting the tank vessel operator that a level or pressure change has occurred in a cargo tank. The Coast Guard will evaluate the performance and cost effectiveness of any device which meets the standards set in this rule, if that device is submitted to the Coast Guard during the effective period of this rule.

DATES: This rule is effective on April 28, 1997 and expires on April 28, 1999.

ADDRESSES: The Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 90–071], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, maintains the public docket for this rulemaking. The telephone number is (202) 267–1477. The public docket is 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: Laura L. Hamman, Project Manager, Office of Design and Engineering Standards (G–MSE), (202) 267–2206.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 7, 1991, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) to solicit comments on minimum standards for leak detection devices and their use (56 FR 21116). The Coast Guard received 20 comments to the ANPRM.

On December 9, 1994, a public meeting was held. This meeting gave the public an opportunity to provide further input into the development of proposed regulations. As a result of the public meeting nine comments were received.

On August 21, 1995, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Tank Level or Pressure Monitoring Devices'' (60 FR 43427). The NPRM proposed performance standards of 0.5 percent of tank volume or 1,000 gallons, whichever is less. As a result of the NPRM, 10 comments were received.

This temporary rule addresses comments to the NPRM, and presents the Coast Guard's temporary rule on Tank Level or Pressure Monitoring Devices.

Background and Purpose

Section 4110 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) requires the Secretary of Transportation to set, by regulation, minimum standards for tank level or pressure monitoring devices. Tank level or pressure monitoring devices detect changes in the level of oil in a cargo tank or changes in the pressure within a cargo tank. Section 4110 of OPA 90 applies to the carriage of oil in bulk as cargo aboard tank vessels. Section 4110 also requires issuance of regulations requiring the use of tank level or pressure monitoring devices. The purpose of the devices is to inform the person in charge of a tank vessel that there is a change in tank level or pressure so that, if required, the Coast Guard can be notified as required by 33 CFR 153.203 and appropriate response actions can be initiated.

Two specific incidents highlighted the possible need for the development of tank level or pressure monitoring devices. The first incident was the loss of cargo aboard Tank Barge 565. While under tow in August 1988, this 37-year-old barge started losing cargo during the night. The loss was not discovered until the morning light reflected off the oil sheen on the water. The barge spilled 4,000 barrels of petroleum into the Chesapeake Bay. The lack of appropriate devices to indicate the loss of cargo during the night prompted Congress to add section 4110 to OPA 90.

The second was in September 1988, when a tankship carrying cargo of carbon black feedstock oil struck a submerged object and lost over 4,000 metric tons of cargo. The loss was not discovered until an estimated 30 minutes passed. During this time, the vessel developed a port list which continued to worsen until it reached 8 degrees. At this point, the master ordered the cargo tanks sounded, and the loss of cargo was discovered. Again, cargo was lost without anyone on board being aware of the loss.

Technical Feasibility Study

The Coast Guard commissioned a technical feasibility study entitled ''Tank Level Detection Devices for the Carriage of Oil,'' which was made available to the public on February 5, 1993 (58 FR 7292).

The study found that a wide variety of liquid level sensing systems exist for both marine and shore-side applications. Several of these systems include the following components: hydrostatic gauges, radar gauging devices, resistance tapes, floats, ultrasonic systems, fiber optics, capacitance-actuated devices, and the electromagnetic level indication (EMLI) system. The study concluded that the performance of these sensing systems is affected by the severity of their operating environment. Operating environment factors include cargo sloshing, foaming, and expansion and contraction of the cargo due to temperature changes.

In addition to discussing the wide variety of available liquid level detectors, the study evaluated the performance of these sensors using both ideal conditions and simulated conditions (e.g., environmental noise, ship motion, etc.). The effects of these conditions varied depending on the system used. In some circumstances,

environmental noise substantially degraded performance. However, the greatest obstacle to obtaining an accurate level reading was found to be the disturbance of the cargo surface caused by ship or barge motion. Sloshing occurs in all tank vessels to varying degrees, depending on such factors as vessel types, weather conditions, and loading configurations. The effects of such motion must be considered in determining the attainable accuracy of level sensing devices.

In addition to sloshing, another result of ship motion was found to be the formation of foam, which can reduce the accuracy of any type of electronic surface level sensing system. Disturbance of the surface was also found to cause pocketing of air, resulting in loss of measurement accuracy.

Despite these problems, the study found that ''attainable accuracy,'' defined as the limit outside of which false level change indications may be ruled out, is within 2 percent of the actual cargo level.

Discussion of Comments

The Coast Guard received 10 comment letters to the NPRM. Seven comments expressed concerns about the lack of current technology available to measure the quantity (0.5 percent or 1,000 gallons) specified by the proposed standards in the NPRM. Three comments expressed concerns about the development and implementation costs of the device due to the lack of available technology. Two comments expressed concerns about the new technological developments. These comments raised concerns that testing should be required prior to the implementation of these devices. The Coast Guard has reviewed the technical feasibility issue and has concluded that current technology cannot meet the sensitivity requirements proposed in the NPRM and finalized in this rule. The Coast Guard will not accept a tank level or pressure monitoring device until it meets the standards in this temporary rule. The Coast Guard will address testing of devices, if devices meeting the standards in this temporary rule are developed and submitted to the Coast Guard within the effective period of this rule. In addition to a technical evaluation of sensitivity requirements, a comprehensive cost and benefit analysis must be performed by the Coast Guard before any decisions can be made on requiring use of a device.

Two comments expressed concerns about the potential difficulties that would be encountered if the monitoring devices were required in tanks carrying asphalt. The Coast Guard agrees with these concerns and carriage of asphalt is not addressed by the standard in this temporary rule.

Three comments raised concerns on using the words ''leak detection.'' Two other comments noted that there is not an International Maritime Organization (IMO) equivalent requirement for leak detection. The Coast Guard agrees with these concerns and has removed references to leak detection.

Two comments noted that a tank level or pressure monitoring device would be impractical for use on tank barges because they do not routinely operate machinery to generate electricity needed to operate the device while underway. The Coast Guard agrees that the issue of power source would need to be addressed for any device used aboard barges. The Coast Guard will consider power sources as part of its technical evaluation on any device which meets the standards set forth in this rule.

Two comments noted that these devices would need to be capable of withstanding harsh and changing marine environments. The Coast Guard agrees and requires that any tank level or pressure monitoring devices developed using these standards be operable without degradation in heavy seas, moisture, and varying weather conditions.

One comment noted that tank level or pressure monitoring devices should only be required on vessels without double hulls. The Coast Guard agrees with this view. If a device is developed in the future that meets the standards set forth in this regulation and it is determined to be cost effective, the Coast Guard intends to only require its use on single-hull tank vessels.

One comment addressed the issue of distance from a barge's deck house to the towing vessel's bridge, and the need to allow for portable alarms and indicating devices. The Coast Guard agrees with this concern and would allow the use of portable equipment as long as that equipment meets the requirements in this regulation.

Discussion of Rules

This temporary rule sets forth standards for tank level or pressure monitoring devices intended for installation on the cargo tanks of vessels over 5,000 gross tons carrying oil in bulk as cargo. The Coast Guard expects that additional development and research would be necessary to produce tank level or pressure monitoring devices that meet the standards set forth in this regulation. Any person who develops a tank level or pressure monitoring device that meets the minimum standards set forth in this regulation, within the effective period of this regulation, should inform the Coast Guard by contacting the person listed under the section entitled **FOR FURTHER INFORMATION CONTACT.** The Coast Guard will evaluate the device to ensure that it meets the performance standards required by this temporary rule and will assess the costs and benefits associated with the device before implementing any installation requirements. In any case, the public will have an opportunity to comment on any rules proposing the installation of the tank level or pressure monitoring device.

Since these devices are intended to warn the operators of possible loss of cargo due to the discharge from tanks into the water, and double-hull vessels are intrinsically designed to prevent this type of discharge, this regulation applies only to single-hull vessels.

The Coast Guard anticipates an 8.5 percent per year decrease in the number of U.S. single-hull tank vessels, based on OPA 90 phaseout schedules. The need for tank level or pressure monitoring devices is in direct proportion to the number of single-hull vessels. The Coast Guard believes that, unless a tank level or pressure monitoring device is developed within 2 years from the effective date of this temporary rule, it may not be economically feasible to require installation of such a device considering phaseout schedules. Similarly, the Coast Guard anticipates the number of single-hull foreign tank vessels to decrease. Therefore, this temporary rule will only be in effect for 2 years from the effective date.

This temporary rule establishes a standard that requires these devices be able to compensate for changes in cargo volume and that they continue to operate in varying weather conditions. This temporary rule also requires that tank level or pressure monitoring devices have both audible and visible alarms to indicate loss of cargo from the cargo tank.

This temporary rule requires that a tank level or pressure monitoring device must sound an alarm before the content of the cargo tank declines to a level 0.5 percent below the level to which the tank was loaded, or 1,000 gallons of cargo, whichever is less.

The 1,000 gallon threshold was chosen because a discharge of less than 1,000 gallons on the inland waterways is defined as a ''minor discharge'' in accordance with the National Contingency Plan, dated September 15, 1994 (59 FR 47384). A loss of 1,000 or more gallons in virtually all

environments poses appreciable risk to the marine environment.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Costs associated with tank level or pressure monitoring devices are dependent on installation requirements. This regulation establishes no installation requirements and therefore imposes no costs. If a device meeting the requirements of this regulation was developed during the effective period of this temporary rule, the Coast Guard would consider the costs and benefits of requiring installation of such a device. Such an analysis would be based upon the smaller single-hull tank vessel fleet in existence at the time. This analysis would also take into account the OPA 90-mandated regulations already in force in 33 CFR part 157 and 46 CFR parts 31 and 35. These regulations address operational measures to reduce oil spills from existing tank vessels without double hulls and include requirements for enhanced surveys of these vessels. These enhanced surveys reduce the chance of unnoticed structural damage thereby significantly reducing the chance of an oil spill. Thus, the benefits of a tank level or pressure monitoring device would further decrease.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether or not this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies that this regulation would not have a significant economic impact on a substantial number of small entities because this rule imposes no costs on any entities. If a tank level or pressure monitoring device meeting the requirements of this rule was developed, the potential impact on small businesses required to install the device would have to be determined. At that time, the Coast Guard would analyze whether imposition of installation requirements would impose a significant economic impact on a substantial number of small entities. The Coast Guard has chosen to make this rule temporary because of the phaseout period for single-hull vessels. Because many research and development companies may be small entities, the Coast Guard is fully explaining the nature of the shrinking population of single-hull vessels which might be required to install a device. The Coast Guard hopes that this will help those small entities determine whether to pursue development of a product to exploit this market.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will provide assistance to small entities to determine how this rule applies to them. If you are a small entity and need assistance understanding the provisions of this rule, please contact the Project Manager, Ms. Laura Hamman at (202) 267–2206.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2e.(34)(e) of Commandant Instruction M16475.lB, this rule is categorically excluded from further environmental documentation. This temporary rule establishes standards for tank level or pressure monitoring devices which would mitigate the impacts of oil spills. This temporary rule does not require installation or use of these devices.

This rulemaking is, therefore, administrative in nature and has no direct impact on the environment and is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and record keeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 32 as follows:

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; E.O. 12234 3 CFR 1980 Comp., p. 277; 49 CFR 1.46; Section 32.22T–5 and Subpart 32.59 are also issued under 46 U.S.C. 3703 note.

2. Subpart 32.22T is added to read as follows:

Subpart 32.22T—Tank Level or Pressure Monitoring Devices

Sec.
32.22T–1 Scope and applicability.
32.22T–5 Performance standards for tank level or pressure monitoring devices.

Subpart 32.22T—Tank Level or Pressure Monitoring Devices

§ 32.22T–1 Scope and applicability.

(a) *Effective period*. This subpart is effective for 2 years from April 28, 1997.

(b) *Applicability*. The standards set forth in this subpart apply to tank level or pressure monitoring devices developed for use on single-hull tank vessels over 5,000 gross tons carrying oil in bulk as cargo.

(c) *Scope*. This subpart sets performance standards for tank level or pressure monitoring devices. If a device meeting these standards is developed during the effective period of this subpart, the Coast Guard will address installation requirements separately. During the effective period of this subpart no owner or operator is required to install any tank level or pressure monitoring device meeting the performance standards of this subpart unless required by the Coast Guard in a separate regulation.

§ 32.22T–5 Performance standards for tank level or pressure monitoring devices.

(a) A tank level or pressure monitoring device shall determine the level of the liquid in a cargo tank without opening ullage holes, cargo hatches, or butterworth plates.

(b) A tank level or pressure monitoring device shall meet the following standards:

(1) Automatically compensate for changes in cargo volume due to temperature.

(2) Meet the requirements in § 111.105 of this chapter when used in hazardous locations.

(3) Indicate any loss of power or failure of the tank level or pressure monitoring device and monitor the condition of the alarm circuitry and sensor by an electronic self-testing feature.

(4) Alarm before cargo in the cargo tank declines to a level of 0.5 percent below the quantity to which it was loaded, or 1,000 gallons of cargo, whichever is less.

(5) Operate without degradation in heavy seas, moisture, and varying weather conditions.

(6) Not alarm when loading or off loading cargo.

(7) Have audible and visible alarm indicators that can be seen and heard on the navigation bridge of the vessel, or towing vessel for non-self-propelled vessels, which are distinctly identifiable as cargo tank level or pressure monitoring alarms.

Dated: March 21, 1997.

J.C. Card,

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

[FR Doc. 97–7917 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–14–P

Proposed Rules

Federal Register
Vol. 62, No. 60
Friday, March 28, 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.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AI46

Schedule for Rating Disabilities: Cold Injuries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (38 CFR part 4) by revising the evaluation criteria for frozen feet. The intended effect of this amendment is to provide evaluation criteria based on current medical knowledge about the long-term effects of cold injury that can be applied to any part of the body affected by cold injury.

DATES: Comments must be received by VA on or before May 27, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420. Comments should indicate that they are in response to ''RIN 2900–AI46.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (213A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: Disability due to frozen feet is currently evaluated under diagnostic code (DC) 7122 in 38 CFR 4.104, the section of VA's Schedule for Rating Disabilities that is titled ''Schedule of ratings—cardiovascular system.'' Because much more is now known about the long-term effects of cold injury than when these criteria were established, we propose to update the criteria to assure that they are consistent with modern medical knowledge and encompass the broad range of residuals that may result from cold injury. Since cold injuries may affect parts of the body other than the feet, particularly the hands, nose, and ears, we propose to retitle DC 7122 ''Cold injury, residuals of'' to indicate that it may be used to evaluate any cold injury.

The current evaluation criteria for frozen feet provide three levels of evaluation, with separate evaluations at each level, for unilateral and bilateral involvement. The evaluations, which range from 10 to 50 percent, are based on the presence of chilblains, swelling, tenderness, and redness, and there are subjective indicators, e.g., ''mild'' symptoms, ''persistent severe'' symptoms, at each level. A major goal of the overall revision of VA's rating schedule that is underway is to provide more objective evaluation criteria. We therefore propose to provide criteria that are both more objective and more consistent with the current state of medical knowledge.

We propose new criteria based on the presence of pain, numbness, cold sensitivity, or arthralgia for a 10-percent evaluation; the same symptoms plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities such as osteoporosis, subarticular punched out lesions, and osteoarthritis for a 20-percent evaluation and the same symptoms plus two or more of the following: Tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities (same as above) for a 30-percent evaluation. These are the most common long-term residuals of cold injury (''Harrison's Principles of Internal Medicine'' 2199 (Jean D. Wilson, M.D. et al. eds., 12th ed. 1991)), and the proposed criteria should assure consistent evaluations of veterans with cold injury.

In the current schedule, a note under DC 7122 advises that higher ratings may be warranted for amputation of toes. We propose to revise the note to indicate that there are other conditions besides amputations, such as squamous cell carcinoma at the site of a cold injury scar, or peripheral neuropathy, that warrant separate evaluation.

In addition to revising the criteria themselves, and in light of the fact that under the revised code, parts of the body other than the feet may be evaluated, we propose to revise the method of determining an overall evaluation when more than one body part is affected. Rather than providing specific evaluations for unilateral and bilateral evaluations, we propose to add a second note following DC 7122 directing that each affected part (hand, foot, ear, nose) be evaluated separately and the ratings combined. This will not only allow separate evaluations for affected parts other than the feet but will, unlike the current schedule, provide a means of appropriately evaluating each of paired parts when they are not equally affected.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: December 17, 1996.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 38 U.S.C. 1155.

2. Section 4.104 is amended by revising diagnostic code 7122 and adding a new authority citation at the end of the section, to read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

* * * * *

	Rating
7122 Cold injury, residuals of:	
With pain, numbness, cold sensitivity, or arthralgia plus two or more of the following: Tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis) of affected parts ..	30
With pain, numbness, cold sensitivity, or arthralgia plus tissue loss, nail abnormalities, color changes, locally impaired sensation, hyperhidrosis, or X-ray abnormalities (osteoporosis, subarticular punched out lesions, or osteoarthritis) of affected parts ..	20
With pain, numbness, cold sensitivity, or arthralgia	10

Note (1): Amputations of fingers or toes, and complications such as squamous cell carcinoma at the site of a cold injury scar or peripheral neuropathy should be separately evaluated under other diagnostic codes.

Note (2): Evaluate each affected part (hand, foot, ear, nose) separately and combine the ratings, if appropriate, in accordance with 38 CFR 4.25.

* * * * *

(Authority: 38 U.S.C. 1155)

[FR Doc. 97–7833 Filed 3–27–97; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Parts 111 and 502

Manufacture, Distribution, and Use of Postal Security Devices and Information Based Indicia

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would add new sections to the Domestic Mail Manual (DMM) and title 39, Code of Federal Regulations (CFR), to reflect policies and regulations pertaining to the Information Based Indicia Program (IBIP). The proposal supports the IBIP technical specifications published on July 2, 1996, in the **Federal Register** (61 FR 34460). The standards and regulations for the products/devices are in some ways similar to those for postage meters but are to be contained in separate parts of the DMM and the CFR. The DMM pertains to customer requirements and product/service provider support of those customers, whereas the CFR contains requirements such as authorization to manufacture and distribute, product testing and approval, security standards, and financial arrangements.

DATES: Comments must be received on or before April 28, 1997.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Retail Systems and Equipment, Room 8430, 475 L'Enfant Plaza SW, Washington, DC 20260–6807. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: The Information Based Indicia Program (IBIP) involves the development of new technology to produce forms of postage evidencing through the use of two-dimensional barcodes and cryptographic services to produce postage from personal computers. This technology will support Postal Service efforts to reduce fraud and the potential for misuse associated with current mechanical postage meters. In addition, IBIP provides a convenient access to postage and an opportunity for customer defined ''value added'' services.

There are five primary elements to IBIP. The indicia includes:

- Town circle information.
- Postage amount applied.
- Device identifier.
- 2 dimensional bar code.
- Optional advertising art.

The postal security device (PSD) performs core security functions such as digital signature generation and verification and the management of registers. The host system controls the customers infrastructure in device authorization, device audit, postage resetting and, together with the PSD, produces the indicia.

The key management component employs a public-key certificate based digital signature that features a data integrity service and provides the means to validate the indicium. Finally, the product/service provider infrastructure provides support for all IBIP functions including licensing, PSD production and life cycle support, and provides an interface with both the customer and the Postal Service infrastructure. The Postal Service interface involves the issuance of licenses, updating licensee information, product/device inventory and tracking, resetting support and account reconciliation, lost and stolen/irregularity monitoring, and the assignment of digital certificates.

In this proposal, the Postal Service has taken into consideration and evaluated applicable comments received as a result of the July 2 **Federal Register** notice, the July 19 public meeting on technical specifications, and the September 25 public meeting on policy and regulations. The following is a summary of the Postal Service's position on the general interest IBIP policy issues:

- Any proposed product or device must be submitted for approval under proposed draft IBIP interim product submission procedures (Jan 8, 1997 Federal Register). These procedures include specifics on letters of intent, nondisclosure agreements, the product/service provider's concept of operations and infrastructure, documentation requirements, product submissions, and most testing activities.
- In an attempt to use the existing Postal Service infrastructure as much as possible, customer licensing and product/device tracking will be included in the Centralized Meter Licensing System currently under development. A license must be obtained prior to the initialization or use of a device. A customer already licensed to use postage meters will not have to apply again for an additional license. The Postal Service will simply update the customer's file.
- The terms ''manufacturer'' and ''vendor'' are no longer referenced in IBIP. These have been replaced by the more appropriate term ''product/service provider'', also known simply as ''Provider.''
- The PSD must be leased by the product/service provider but customers may purchase the software under two circumstances. The first is in an open system where the PSD operates independently of the software. The second is in a closed system where the meter is rendered nonfunctional for printing postage without the PSD. The Postal Service will not offer PSDs to customers.
- Until the Postal Service has captured historical data on reliability and security, the total amount of postage in a descending register will be limited to $500. Ascending registers must show all postage printed over time.

• Authorized product/service providers must keep records of the distribution, control, and maintenance of all products/devices throughout the complete lifecycle of the product. This includes tracking of newly manufactured PSDs, active leased PSDs and inactive unleased PSDs. Tracking of a PSD must begin as soon as the PSD is initialized with the key.

• Indicia produced from the IBIP Open and Closed Systems may be used to indicate postage for First-Class, Express and Standard Mail classes. Indicia produced from the IBIP Closed System also may be used on International Mail. Mail bearing the indicia is entitled to all privileges and subject to all conditions applying to the various classes of mail.

• Product/service providers are responsible for audit functions. The Postal Service will not take over this function but may at times participate in the audit process. PSDs must be audited at least once every 3 months in conjunction with remote settings and resetting of the watch-dog timer.

• Product/service providers must perform an analysis of each submitted customer mailpiece as part of the Provider's Mailpiece Quality Assurance program to ensure the quality and readability of the indicia. The provider must notify the customer and the Postal Service of any deficiencies.

• All postage downloads or settings will be made under the provisions of the Computerized Remote Meter Resetting System (CMRS). The Postal Service will conduct periodic audits of a product/service provider's resetting system to ensure that the system is operating correctly and that postal revenues are protected.

• Physical inspections of PSDs will be made at the time of submission for approval and if there is suspicion of a security problem.

• The Postal Service will provide refunds for any balance remaining on a PSD. The licensee will be required to submit a written refund request to the Provider, along with the affected PSD and supporting documentation such as an electronic daily activity report.

• All approved systems must have the capability to update postage rates efficiently when such changes are announced.

• There are provisions in the IBIP regulations for the correction of postage and dates. These are similar to those used for metered postage. For date correction, the facing identification mark (FIM) and barcode will be suppressed; for postage correction, the FIM will be suppressed.

• Cautionary labels such as those affixed to postage meters will not be affixed to PSDs. However, providers should make their customers aware of this information through their supplied software.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Add the following sections to the Domestic Mail Manual as set forth below:

P050 Information Based Indicia

1.0 BASIC INFORMATION

1.1 Description of Product/Device

The Product/Device prints an authorized USPS Information Based Indicia that shows evidence of postage. The indicia consists of a USPS-approved two-dimensional barcode and certain human-readable information such as city and state, 5-digit ZIP Code of licensing post office, Device ID number, date, and amount of postage. The Product/Device includes as a primary component a postal security device (PSD) that provides critical functionality for accounting postage with a computer-based (open system) or postage meter-based (closed system) host system. The PSD and host system interact to generate the indicia. The Product/Device is remotely set and requires the customer to have funds on deposit with the USPS before initial setting or resetting.

1.2 Product/Service Device Providers

The Product/Device is available only through a lease agreement from a USPS authorized Product/Service Provider (hereafter referred to as Provider). The open host system is envisioned to operate on personal computers. The licensee can purchase the software if the PSD component operates independently of the software. For a closed system, the customer can purchase the software if it is rendered nonfunctional for printing postage without the PSD. The USPS holds Providers responsible for the life cycle, control, operation, maintenance, and replacement of their Products/Devices.

1.3 Possession

A customer must have a USPS-issued Product/Device Postage Meter License (Form 3601–B) to use the PSD component.

1.4 Classes of Mail

Indicia produced from the IBIP Open and Closed System may be used to indicate postage for First-Class, Express and Standard Mail classes. Additionally, indicia produced from the IBIP Closed System may be used for International mail. Mail bearing the indicia is entitled to all privileges and subject to all conditions applying to the various classes of mail.

1.5 Amount of Postage

The value of the Product/Device indicia affixed to each mailpiece must be the exact amount due for the piece when mailed.

1.6 Additional Postage

An indicia showing additional postage may be placed on a shortpaid mailpiece under 4.9, Postage Correction.

2.0 LICENSE

2.1 Procedures

The application and the license are processed through the Centralized Meter Licensing System (CMLS). An applicant wanting to lease and use a Product/Device must provide all applicable data on the Form 3601–A, *Application for a License to Lease and Use Postage Meters*, to the Provider. The application must state the post office where the applicant intends to deposit mail produced using their Product/Device. The Provider electronically transmits the information requested on Form 3601–A to CMLS in the USPS-specified format. When a Provider transmits the application on behalf of the applicant, the USPS notifies the Provider when a license is issued. A single license covers all Products/Devices to the same applicant by the same post office, but a separate application must be submitted for each post office where the applicant wants to deposit Product/Device mail. There is no fee for the application and license. After approving an application, the USPS issues a Postage Meter License (Form 3601–B). Subsequently, for each Product/Device checked into service, a Form 3602–A, *Record of Register Readings*, or equivalent will be

provided. The licensee must maintain daily register readings by using a system-generated daily activity report or by completing Form 3602–A to support refund requests. A customer will not have to apply for a license to use a Product/Device if the customer already possesses a valid postage meter license.

2.2 Refusal to Issue Product/Device License

The USPS may refuse to issue a Product/Device license for the following reasons: The applicant submitted false or fictitious information on the license application; the applicant violated any standard for the care or use of a Product/Device or postage meter that resulted in the revocation of that applicant's Product/Device license within 5 years preceding submission of the application; or there is sufficient reason to believe that the Product/Device is to be used in violation of the applicable standards. The USPS sends the licensee written notice when an application for a license to lease and use a Product/Device is refused. The USPS notifies the Provider if the license is refused. Any applicant refused a license may appeal the decision under 2.4.

2.3 Revocation of License

The USPS sends written notice to the licensee and the licensee's Provider of any revocation. Revocation takes effect 10 days after receipt unless, within that time, the licensee appeals the decision under 2.4. A license is subject to revocation for any of the following reasons:

a. A Product/Device is used for any illegal scheme or enterprise or there is probable cause to believe that the Product/Device is to be used in violation of the applicable standards.

b. The Product/Device is not reset or audited within a 3-month period.

c. Sufficient control of a Product/Device is not exercised or the standards for its care or use are not followed.

d. The Product/Device is kept or used outside the boundaries of the United States or those U.S. territories and possessions without USPS approval.

e. Product/Device mail is deposited at other than the licensing post office (except as permitted by 5.0 or D072).

f. Failure to forward mailpieces to the Provider for quality assurance as required by 2.5h.

2.4 Appeals

An applicant who is refused a license, or a licensee whose license is revoked, may file a written appeal with the manager of Retail Systems and Equipment (RSE), USPS Headquarters (see G043 for address) within 10 calendar days of receipt of the decision. A licensee appealing decisions on postage adjustments may file the appeal, with the same official, within 60 days of the date that the Provider submitted the postage adjustment recommendation to the USPS.

2.5 Licensee Responsibilities

The licensee's responsibilities for the care and use of a Product/Device (PSD) include the following:

a. After a PSD is delivered to a licensee, it must remain in the licensee's custody until it is returned to the authorized Provider.

b. Each day of operation, the licensee must record the readings of the ascending and descending registers on Form 3602–A. A licensee using a Product/Device system that records these readings electronically may use the system-generated report as a substitute for Form 3602–A.

c. The licensee must, upon request, make the Product/Device in the licensee's custody and corresponding records on transactions immediately available for review and audit to the Provider or the USPS.

d. The licensee must remote-set Products/Devices at least once every 3 months for examination.

e. The licensee must immediately notify the Provider of any change in the licensee's name, address, telephone number, the location of the Products/Devices, or any other information on the Form 3601–A.

f. The USPS issues a revised Product/Device license based on the transmission of updated information from the Provider. The licensee must verify and update license information on a periodic basis. If a licensee changes the post office where Product/Device mail is to be deposited, the Product/Device must be checked out of service by the authorized Provider. The customer must be relicensed at the new post office before the Provider can issue and reset a replacement device.

g. The licensee must report a misregistering or otherwise defective Product/Device to the Provider under 2.7 and must ensure that the defective Product/Device is not used.

h. The licensee must maintain address quality by updating the USPS CD–ROM disk at least once every 3 months.

i. The licensee must forward a mailpiece produced by the host system to the Provider at least once every 3 months after initialization for quality assurance.

j. The customer must enter into a signed lease agreement with the Provider that includes a financial agreement for resetting the device with postage.

2.6 Custody of Suspect Product/Device (PSD)

Postal inspectors are authorized to conduct unannounced, on-site examinations of Products/Devices reasonably suspected of being manipulated or otherwise defective. An inspector may also immediately withdraw a suspect Product/Device from service for physical and/or laboratory examination. The inspector issues the licensee a receipt for the Product/Device, forwards a copy to the Provider, and, if necessary, assists in obtaining a replacement Product/Device. Where possible, the Inspection Service provides the Provider with advance notice that a Product/Device is to be inspected. Unless there is reason to believe that the Product/Device is fraudulently set with postage, existing postage in the Product/Device to be examined is transferred to the replacement Product/Device.

2.7 Defective product/Device (PSD)

The licensee must immediately report any defective Product/Device to the Provider. The Provider must retrieve any defective Product/Device within 3 business days of notification by the licensee and notify the USPS. A faulty Product/Device may not be used under any circumstance and must be returned to the Provider. The Provider provides the licensee with a replacement Product/Device.

2.8 Missing Product/Device (PSD)

The licensee must immediately report to the Provider and licensing post office the loss or theft of any Product/Device or the recovery of any missing Product/Device. Reports must include the PSD identification number and serial number; the date, location, and details of the loss, theft, or recovery; and a copy of any police report.

2.9 Returning Product/Device (PSD)

After a PSD is delivered to a licensee, the PSD must be kept in the licensee's custody until returned to the authorized Provider. A licensee with a faulty or misregistering PSD or who no longer wants to keep a PSD must return the PSD to the Provider to be checked out of service. PSDs must be shipped by Priority Mail Returned Receipt for Merchandise unless the Manager, RSE, USPS Headquarters, gives written permission to ship at another rate or special service.

3.0 SETTING PRODUCTS/DEVICES (PSD)

3.1 Initial Setting

Before the licensee is issued a PSD, the PSD must be initialized and authorized by the Provider. The customer must enter into a lease agreement with the Provider that includes a financial agreement for resetting the device with postage. Settings are made according to the provisions of USPS Computerized Remote Postage Meter Resetting System (CMRS).

3.2 Payment for Postage

Payment must be made for postage before the Product/Device is set. The customer is permitted to make payment in one of six ways: cash, debit card, credit card, wire transfer and (ACH) automated clearinghouse debit or credit. Acceptance by a provider of all payment forms, with the exception of debit and credit card, is mandatory. If a provider elects to offer debit and credit cards as a payment option, the USPS selected merchant card processor must be used as the processor. All merchant card processor discount fees must be borne by the provider.

3.3 Postage Transfers and Refunds

Postage losses due to malfunctions are the responsibility of the Provider. The USPS provides refunds for any balance remaining on the PSD. The licensee must submit a written refund request with the affected PSD to the Provider along with supporting documentation such as a daily activity report. The USPS also provides refunds to a licensee for any balance remaining in a CMRS account.

3.4 Periodic Examinations

A Products/Device must be reset at least once every 3 months. An update of the watchdog timer along with a device audit satisfies this requirement. The USPS reserves the right to examine the Product/Device by remote access or otherwise.

3.5 Resetting

The following conditions must be met to reset a Product/Device:

a. The licensee's account must have sufficient funds to cover the desired postage increment, or the Provider must agree to advance funds to the USPS on behalf of the licensee. The USPS encourages the Providers to recommend the use of the following payment forms by order of preference:

1. ACH Debit
2. ACH Credit
3. Wire Transfer
4. Debit Card Optional
5. Check Card Optional
6. Check

b. As part of the resetting procedure, the licensee must provide identification information according to the Provider's resetting specifications.

c. After a Product/Device is reset, the Provider must provide the licensee with documentation of the transaction and the balance remaining in the licensee's account, unless the Provider provides a monthly statement documenting all transactions for the period and the balance after each transaction.

3.6 Amount of Postage

The PSD descending register is programmed not to exceed $500 at any time.

4.0 INDICIA

4.1 Design

Product/Device indicia designs (types, sizes, and styles) must be those specified when Product/Device is approved by the USPS for manufacture.

4.2 Legibility

Product/Device indicia must be legible and must not overlap. An illegible or overlapping indicia is not acceptable when determining postage paid. Minimal standards for acceptable reflectance measurements of the indicia and the background material are in the Uniform Symbology Specifications PDF 417. The FIM must meet the dimensions and print quality specified in DMM C810. For an open system, the address and POSTNET barcode must meet the specifications listed in the DMM C840.

4.3 On Tape/Label

The USPS-approved tape/label must be used when IBI indicia are to be printed on tape/label. Labels are subject to corresponding standards in DMM C810.

4.4 Position

The Product/Device indicia must be printed or applied in the upper right corner of the envelope, address label, or tag. The indicia must be at least ¼ inch from the right edge of the mailpiece and ¼ inch from the top edge of the mailpiece. The indicia barcode must be horizontally oriented. The indicia must not infringe on the areas reserved for the facing identification mark (FIM), POSTNET barcode, or optical character reader (OCR) clear zone. These apply to pieces meeting the dimensions specified in C800.

4.5 Content, Generally

In usage, the indicia must consist of human-readable information and two-dimensional barcoded information unless specified otherwise herein. The human-readable information must show, as a minimum, the city, state, and 5-digit ZIP Code of the licensing post office, the device id, and the amount of postage. On approval of the licensing post office, the Product/Device indicia may contain the name and state designation of its local classified branch. This authorization does not apply to classified stations or to contract stations or branches. Alternatively, the indicia may show the ZIP Code rather than the city and state designation. In this case, the words ''Mailed From ZIP Code'' and the mailer's delivery address ZIP Code must appear in place of the city and state, respectively. When it is necessary to print multidenomination Product/Device indicia on more than one tape, the human-readable information showing the post office must be on each tape.

4.6 Complete Date

The month, day, and year must be shown in the indicia on all First-Class Mail, and on all registered, certified, insured, COD, special delivery, and special-handling mail. On Standard Mail the day may be omitted. Mail pieces bearing an indicia with only the month and year may be accepted during the month shown. They may also be accepted through the third day of the following month if the postmaster finds that the mailing was unavoidably delayed before deposit with the USPS.

4.7 Date Accuracy

The date shown in the indicia must be the actual date of deposit. Mail deposited after the day's last scheduled collection may bear the date of the next scheduled collection.

4.8 Date Correction

With the mailpiece oriented to read the address, the indicia showing actual date of mail and the word ''REDATE'' instead of the postage amount may be used to correct the date. The indicia must be placed on the non-address side at least 20mm from the bottom edge of the mailpiece. The indicia impression must not bear the FIM nor the two-dimensional barcode.

4.9 Postage Correction

An indicia for additional postage may be placed on a shortpaid mailpiece to correct postage. The corrected indicia must be printed on the nonaddress side at least 20mm from the bottom edge of the piece and not on an envelope flap. The Product/Device impression on the nonaddress side must contain all the indicia elements except for the FIM. To

meet two-dimensional barcode readability requirements, an indicia may be printed on a USPS-approved tape/label.

4.10 Other Matter Printed on Product/Device Indicium

Advertising matter, slogans, return addresses, and the postal markings specified in 4.11 may be printed with the indicia within space limitations. A licensee must obtain the content for printing this matter from the authorized Product/Device Provider. Advertising art messages must include the mailer's name or words such as ''Mailer's Message.'' The advertising art must not be obscene, defamatory of any person or group, or deceptive and it must not advocate any unlawful action. The Provider must obtain prior approval for all advertising matter for any Product/Device.

4.11 Postal Markings

Postal markings related to the class or category of mail are permissible. If placed in the advertising art area, only the postal marking may be printed, and it must fill the advertising art area as much as possible. All words must be in bold capital letters at least ¼ inch high (18-point type) and legible at 2 feet. Exceptions are not made for small advertising art that cannot accommodate a permissible marking.

4.12 Open System FIM

A mailpiece generated from an open system must bear a USPS-approved FIM D unless the envelope is courtesy reply with a FIM A or the piece is not a letter or a flat. The location of the FIM applies to pieces meeting the dimensions specified in DMM C800.

4.13 Closed System FIM

A mailpiece generated from a closed system must bear a USPS-approved FIM E, if the piece is nonbarcoded prior to deposit. If the closed system generates or uses envelopes that bear or will bear a delivery point barcode (DPBC), the envelopes must have a USPS-approved FIM D unless the envelope is a courtesy reply with a FIM A or the piece is not a letter or a flat. The location of the FIM applies to pieces meeting the dimensions specified in DMM C800.

5.0 MAILINGS

5.1 Preparation

Product/Device mail is subject to the preparation standards that apply to the class of mail and rate claimed.

5.2 Combination

Product/Device mail may be combined in the same mailing with mail paid with other methods only if authorized by the USPS.

5.3 Where to Deposit

Except as noted below, Product/Device mail must be deposited at a post office acceptance unit, window unit, or other location designated by the postmaster of the licensing post office (i.e., the post office shown in the indicia) and may not be given to a delivery employee or deposited in a street collection box, mail chute, receiving box, cooperative mailing rack, or other mail collection receptacle. Exceptions to this general standard are [as follows]:

a. Single-piece rate First-Class Mail may be deposited in any street collection box or such other place where mail is accepted and that is served by the licensing post office.

b. Limited quantities (i.e., a handful) of single-piece rate First-Class Mail may be deposited at offices other than the licensing post office to expedite dispatch.

5.4 Irregularities

Product/Device mail is examined by the USPS to detect irregularities in preparation and dating. Errors do not include pieces that legibly show the previous date if the pieces were deposited in a collection box after the last collection or were not collected by the USPS as scheduled on the date in the indicia.

6.0 PRODUCT/DEVICE MANUFACTURE AND DISTRIBUTION

Title 39, Code of Federal Regulations, part 502, contains information about the authorization to manufacture and distribute Products/Devices; the suspension and revocation of such authorization; performance standards required in Products/Devices, test plans, testing, and approval of Products/Devices; required manufacturing security measures; and standards for the distribution and maintenance of Products/Devices. Further information may be obtained from Retail Systems and Equipment, USPS Headquarters.

List of Subjects in 39 CFR Part 502

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)), regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of Federal Regulations.

For the reasons set out in this document, the Postal Service proposes to add 39 CFR part 502 as follows:

PART 502—AUTHORITY TO MANUFACTURE AND DISTRIBUTE INFORMATION BASED INDICIA PRODUCTS AND SERVICES

Sec.

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502.31 Notice of proposed changes in regulations.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 410, 2610, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

§ 502.1 Product/Service Provider authorization.

Any person or concern seeking authorization to manufacture and/or distribute an Information Based Indicia Program (IBIP) Product/Device must submit a request to the Postal Service in person or in writing. Upon qualification and approval, the applicant is authorized in writing to manufacture Products/Devices and to lease them to persons licensed by the Postal Service. The Postal Service may specify the functional area charged with processing the application and administering its Product/Device program.

§ 502.2 Product/Service Provider qualification.

Any person or Product/Service Provider (hereafter referred to as Provider) wanting authorization to provide and/or lease, sell, or otherwise distribute, as approved by the Postal Service, Products/Devices for use by licensees under Domestic Mail Manual P050.1.2 must:

(a) Satisfy the Postal Service of its integrity and financial responsibility;

(b) Obtain approval of at least one Product/Device model incorporating all the features and safeguards specified in § 502.9;

(c) Have, or establish, and keep under its supervision and control adequate manufacturing facilities suitable to carry out the provisions of § 502.18 through § 502.21 to the satisfaction of the Postal Service (such facilities must be subject to unannounced inspection by representatives of the Postal Service); and

(d) Have, or establish, and retain adequate facilities for the control, distribution, and maintenance of Products/Devices and their replacement when necessary.

§ 502.3 Changes in ownership or control.

Any person or concern wanting to acquire ownership or control of an authorized Provider must provide the Postal Service with satisfactory evidence of that person's or concern's integrity and financial responsibility.

§ 502.4 Burden of proof standard.

The burden of proof is on the Postal Service in the adjudication of suspensions and revocations under § 502.5 and § 502.14 and administrative sanctions under § 502.16 and § 502.22. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance of evidence standard.

§ 502.5 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to provide and/or distribute any or all of a Provider's Products/Devices if the Provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this part 502, or fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over the Product/Device programs.

(b) The decision to suspend or revoke a Provider's authorization shall be based on the nature and circumstances of the violation (e.g., whether the violation was willful, whether the Provider voluntarily admitted to the violation, whether the Provider cooperated with the Postal Service, whether the Provider implemented successful remedial measures) and on the Provider's performance history. Before determining whether a Provider's authorization to manufacture and/or distribute Products/Devices should be revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a Provider is in violation of the provisions in this part 502, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension or authorization to manufacture and/or distribute a specific Product/Device or classes thereof may be imposed under paragraph (c)(2) of this section. Except in cases of willful violation, the Provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the Provider has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) If, upon consideration of the defense as provided in paragraph (e) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the Provider to correct the problem;

(ii) Make a determination to revoke authorization to provide and/or distribute the Provider's Products/Devices in part or in whole; or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the Provider's solution and implementation are satisfactory.

(d) The Provider may present the Postal Service with a written determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(e) After receipt and consideration of the defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the Provider that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter period is deemed necessary), as specified therein. The appeal must include all supporting evidence and specify the reasons the Provider believes that the decision is erroneous.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 502.6 Description of product/device.

The Product/Device prints an authorized Postal Service Information Based Indicia that shows evidence of postage. The indicia consists of a USPS-approved two-dimensional barcode and certain human-readable information such as city and state, 5-digit ZIP Code of licensing post office, Device ID number, date, and amount of postage. The Product/Device includes as a primary component a postal security device (PSD) that provides critical functionality for accounting postage with a computer-based (open system) or postage meter-based (closed system) and a host system. The PSD and host system interact to generate the indicia. The Product/Device is remotely set with postage value and requires the licensee to have funds on deposit with the Postal Service prior to initial setting or resetting.

§ 502.7 Description of open and closed systems.

(a) An ''Open System'' does not require that the implementing components be dedicated to the IBIP functions. This system may allow multiple non-postage related software applications to be in use and it also may depend on several interconnected devices that may serve multiple purposes for their user. The open system computer and peripherals such as the printer and CD–ROM drive may perform functions unrelated to the Information Based Indicia Program (IBIP). Host operations may depend upon computer software such as operating systems and communications

systems. The open system version is responsible for composing a complete, integrated mailpiece front (or a tape/label for the piece).

(b) The ''closed system'' is a device dedicated toward IBIP functions. Closed systems do not have to satisfy Postal Service address standards or include the destination ZIP Code in the indicia. Closed systems may satisfy the other administrative requirements through external processes. If a closed system operates as a component of an integrated mailing system, it may be subject to the open system requirements. An integrated mailing system shall be subject to open system requirements if it includes a computer interfaced to the meter and it prepares mailpiece fronts or labels that include both the destination address and the indicium. The integrated system is an open system even if different printers apply the address and the indicium. If the mailing system satisfies these criteria, the USPS considers the ''meter'' to be an open system peripheral device that performs the dual functions of printing indicia and interfacing the PSD to the open host. The integrated mailing system must be approved by the USPS according to the open system criteria.

§ 502.8 Product/Device provider.

A Product/Device is available only through a lease agreement from Providers authorized by the Postal Service. For an open system, the licensee may purchase the software if the PSD component operates independently of the software. The open system form of the host is envisioned to operate on personal computers. For a closed system, the licensee may purchase the printing device if it is rendered nonfunctional without the PSD. The Postal Service holds Providers responsible for the life cycle, control, operation, maintenance, and replacement of their Products/Devices.

§ 502.9 Product/Device specifications.

The IBIP Specifications describe system elements that include Postal Service infrastructure, Provider infrastructure, and customer infrastructure. The existing Postal Service infrastructure supports customer authorization, product audit, postage resetting reporting, total population management, key management support, financial reconciliation, product lifecycle tracking, lost and stolen/irregularity management functions. The Provider infrastructure will support all IBIP functions. The customer infrastructure will consist of the Product/Device's PSD and host system. The Postal Service will evaluate and test IBIP Products/Devices for compliance with this infrastructure.

(a) The indicium data content is described in the Information Based Indicia Program (IBIP) Indicium Specification. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

(b) The PSD implements digital signature technology for the creation and verification of digital signatures. Postal Security Device Specification is described in the Information Based Indicia Program Postal Security Device Specification. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

(c) Indicia Design Requirements—The indicia design must comply with the requirements in Domestic Mail Manual (DMM) P050.

(d) Host System Functional Requirements are contained in the Information Based Indicia Program Host System Specification. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

(e) Key Management Functional Requirements are contained in The Information Based Indicia Program Key Management Plan. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza SW, Washington DC 20260–6807 for these requirements.

§ 502.10 Test plans.

Each Product/Device Model that is submitted for USPS approval must be submitted in accordance with the provisions contained in the Information Based Indicia Program Interim Product Submission Procedures. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

§ 502.11 Security testing.

The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Product/Device submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

§ 502.12 Product/Device approval.

As provided in § 502.12, the Provider has a duty to report security weaknesses to the Postal Service to ensure that each Product/Device model and every Product/Device in service protects the Postal Service against loss of revenue at all times. A grant of approval of a model does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the model. After approval is granted to manufacture and distribute a Product/Device, no change affecting the features or safeguards of a Product/Device may be made except as authorized or ordered by the Postal Service in writing.

§ 502.13 Conditions for approval.

(a) The Postal Service may require at any time that production models of approved Products/Devices, as well as the design, user manuals, and specifications applicable to such Products/Devices and any revisions thereof, be deposited with the Postal Service.

(b) On request by the Postal Service, additional Products/Devices must be submitted to the Postal Service for testing, at the expense of the Provider.

(c) All Product/Device submissions must adhere to the requirements contained in the Information Based Indicia Program Interim Product Submission Procedures. Particular attention should be given to the requirement to simultaneously submit an identical Product/Device to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification.

§ 502.14 Suspension and revocation of approval.

(a) The Postal Service may suspend Product/Device approval under § 502.13 if the Postal Service has probable cause to believe that a Provider's Product/Device or class and/or version thereof poses an unreasonable risk to postal revenue. Suspension of approval to Provider or distribute a Product/Device or class and/or version thereof, in whole or in part, shall be based on the potential risk to postal revenue. Before determining whether approval of a Product/Device or class and/or version should be revoked, the procedures in paragraph (b) of this section shall be followed.

(b) Suspension in all cases shall be as follows:

(1) Upon determination by the Postal Service that a Product/Device poses an unreasonable risk to postal revenue, the Postal Service shall issue a written notice of proposed suspension citing deficiencies for which suspension may be imposed under paragraph (b)(2) of this section. The Provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit

corresponding to the potential risk to postal revenue.

(2) If the Postal Service determines that the Provider has failed to correct cited deficiencies within the specified time limit, the Postal Service shall issue a written notice setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (c) of this section.

(3) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (b)(4)(iii) of this section.

(4) At the end of the 90-day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the Provider to correct the problem;

(ii) Make a determination to revoke the approval of the Provider's Product/Device or class and/or version, or

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem. Provider suspensions may be withdrawn before the end of the 90-day period if the Postal Service determines that the Provider's solution and implementation are satisfactory.

(c) The Provider may present the Postal Service with a written defense to any suspension or revocation determination within 30 calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and specify the reasons for which the order should not be imposed.

(d) After receipt and consideration of the written defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise. The decision shall also advise the Provider that it may appeal that determination within 30 calendar days of receiving written notice (unless a shorter period is deemed necessary), as specified therein. The appeal must include all supporting evidence and the reasons that the Provider believes that the decision is erroneous.

(e) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 502.15 Reporting.

(a) For purposes of this section, ''Provider'' refers to the authorized Product/Service Provider in § 502.1 and its foreign or domestic affiliates, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized Product/Service Provider in § 502.1 must submit a preliminary report to notify the Postal Service promptly (in no event more than 21 calendar days of discovery) of the following:

(1) All findings or results of any testing known to the Provider concerning the security or revenue protection features, capabilities, or failings of any Product/Device sold, leased, or distributed by the Provider that has been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or have been submitted for approval by the Provider to the Postal Service or a foreign postal administration.

(2) All potential security weaknesses or methods of Products/Devices tampering that the Provider distributes of which the Provider knows or should know, and the Product/Device or model subject to each method. These potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by a Product/Device licensee or Provider employee, suspected security breaches of the Computerized Remote Postage Meter Resetting System, cryptographic key compromises, occurrences outside normal performance, or any repeatable deviation from normal Product/Device performance (within the same model family and/or by the same licensee).

(c) Within 45 days of the preliminary notification of the Postal Service under § 502.15(b), the Provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The Provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The Provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses. The Provider is required to submit a copy of internal reporting procedures and instructions to the Postal Service for review.

§ 502.16 Administrative sanction on reporting.

(a) Notwithstanding any act, admission, or omission by the Postal Service, an authorized Provider may be subject to an administrative sanction for failing to comply with § 502.15.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the Provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any Product/Device for which the Provider failed to comply with any provision in § 502.15. The Postal Service may recover from Provider any and all such costs and losses (net of any amount collected by the Postal Service from the licensees or Product/Device users) with interest by issuing a written notice to the Provider setting forth the facts and reasons on which the determination to impose the sanction is based. The notice shall advise the Provider of the date that the action takes effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(c) The Provider may present the Postal Service with a written defense to the proposed action within 30 calendar days of receipt. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it states otherwise. The decision shall also advise the Provider that it may, within 30 calendar days of receiving written notice, appeal that determination as specified therein.

(e) The Provider may submit a written appeal to the Postal Service within 30 calendar days of receipt of the decision. The appeal must include all supporting evidence and specify the reasons that the Provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(f) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 502.17 Materials and workmanship.

All Products/Devices must adhere to the quality in materials and workmanship of the approved

production model and must be manufactured with suitable chips, tools . . . etc., to ensure proper functioning.

§ 502.18 Destruction of product/device indicia.

All IBIP indicia created in the process of testing the Products/Devices by the provider, or its agent, must be collected and destroyed daily.

§ 502.19 Inspection of new products/devices.

All new Products/Devices must be inspected carefully before leaving the Provider's Product/Device facility.

§ 502.20 Distribution facilities.

An authorized Provider must keep adequate facilities for and records of the distribution, control, and maintenance of Products/Devices. All such facilities and records are subject to inspection by Postal Service representatives.

§ 502.21 Distribution controls.

Each authorized Product/Service Provider must do the following:

(a) Hold title permanently to all leased PSDs except those purchased by the Postal Service.

(b) On behalf of applicants, electronically transmit copies of completed PS Forms 3601–A, Application for a License to lease and use Postage Meters, to the designated Postal Service central processing facility.

(c) Lease PSDs only to parties that have valid licenses issued by the Postal Service.

(d) Supply with the host system only Product/Device slogan or advertising art that meets the Postal Service requirements for suitable quality and content. The Provider must obtain prior approval for all advertising matter for any Product/Device.

(e) Unless otherwise authorized by the Postal Service, the Provider must immediately obtain and check out of service PSDs, if the licensee no longer wants the PSD or if the PSD is to be removed from service for any other reason. The Provider must keep in its possession for at least 1 year the licensee's PS Form 3601–C, Postage Meter Installation, Withdrawal, or Replacement, and copy of the applicable PS Form 3602–A, Record of Meter Register Readings, or equivalent.

(f) Retrieve any misregistering, faulty, or defective Product/Device to be checked out of service within 3 business days of being notified by the licensee of the defect. After examining the Product/Device withdrawn for apparent faulty operation affecting registration, the Provider must compile a report explaining the malfunction to Retail Systems and Equipment (RSE), USPS Headquarters.

(g) Report promptly the loss or theft of any Product/Device or the recovery of any lost or stolen Product/Device. The Provider must provide notification to the Postal Service by completing a standardized lost and stolen Product/Device incident report and filing it with the Postal Service within 30 days of the Provider's determination of a Product/Device loss, theft, or recovery. The Provider must complete all preliminary location activities specified in § 502.25 before submitting this report to the Postal Service.

(h) Cancel a lease agreement with any lessee whose Product/Device license is revoked by the Postal Service, remove the Product/Device within 15 calendar days, and have the Product/Device checked out of service.

(i) Promptly remove from service any Product/Device that the Postal Service indicates should be removed from service. When a Product/Device license is canceled, all Products/Devices in use by the licensee must be removed from service.

(j) Examine each Product/Device withdrawn from service for failure to record its operations correctly and accurately, and report to the Postal Service the failure or fault that caused the failure.

(k) Provide RSE monthly with a compatible computer tape of lost or stolen Products/Devices. The file is due on the first of each month (for the preceding month's activity).

(l) Take reasonable precautions in the transportation and storage of Products/Devices to prevent use by unauthorized individuals. Providers must ship all Products/Devices by Postal Service Registered Mail unless given written permission by the Postal Service to use another carrier. The Provider must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for registered mail.

(m) Submit a daily financial transaction for each postage value download or postage refill.

§ 502.22 Administrative sanction.

(a) *Product/Device* for purposes of this section means any Product/Device manufactured by an authorized Provider under § 502.1 that is not owned or leased by the Postal Service.

(b) An authorized Provider that, without just cause, fails to conduct or perform adequately any of the controls in § 502.21, to follow standardized lost and stolen Product/Device incident reporting in § 502.25, or to conduct any of the inspections required by § 502.24 in a timely fashion is subject to an administrative sanction based on the investigative and administrative costs and documented revenue losses (net of any amount collected by the Postal Service from the licensee or Product/Device user) with interest per occurrence measured from the date on which the cost and/or loss occurred, as determined by the Postal Service. Sanctions shall be based on the costs and revenue losses that result from the Provider's failure to comply with these requirements.

(c) The Postal Service may impose an administrative sanction under this section by issuing a written notice to the Provider setting forth the facts and reasons on which the determination to impose the sanction is based. The Postal Service shall determine all costs and losses. The notice shall advise the Provider of the date that the action shall take effect if a written defense is not presented within 30 calendar days of receipt of the notice.

(d) The Provider may present to the Postal Service a written defense to the proposed action within 30 calendar days of receipt of the notice. The defense must include all supporting evidence and specify the reasons for which the sanction should not be imposed.

(e) After receipt and consideration of the written defense, the Postal Service shall advise the Provider of the decision and the facts and reasons for it. The decision shall be effective on receipt unless it states otherwise.

(f) The Provider may submit a written appeal of the decision within 30 calendar days of receiving the decision, addressed to the manager of Retail Systems and Equipment, Postal Service Headquarters. The appeal must include all supporting evidence and specify the reasons that the Provider believes that the administrative sanction was erroneously imposed. The submission of an appeal stays the effectiveness of the sanction.

(g) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or concern.

§ 502.23 Product/Device replacement.

(a) The Provider must keep its Products/Devices in proper operating condition for licensees by replacing them when necessary or desirable to prevent electronic failure, malfunction, clock/timer/battery life expiration, or mechanical breakdown.

(b) The Provider must provide the licensees with modifications reflecting rate changes.

§ 502.24 Inspection of products/devices in use.

The Provider must conduct audits of PSDs at least once every 3 months in conjunction with the postage value resetting requirements in § 502.26. In general, the primary role of the PSD in the device audit function is to create device audit messages and pass those messages to the host system for transmission to the Postal Service.

§ 502.25 Products/Devices not located.

Upon learning that one or more of its Products/Devices in service cannot be located, the Provider must undertake reasonable efforts to locate the Products/Devices by following a series of Postal Service-specified actions designed to locate the Products/Devices. If these efforts are unsuccessful and a Product/Device is determined to be lost or stolen, the Provider must notify the Postal Service within 30 days by submitting a Lost and Stolen Product/Device Incident Report.

(a) If a licensee cannot be located, the Provider must, at a minimum, complete the following actions:

(1) Call directory assistance for the licensee's new telephone number.

(2) Contact the licensee's local post office for current change of address information.

(3) Contact the CMLS site and the local MATS coordinator to verify the location of the Product/Device or licensee currently maintained in those Postal Service records.

(4) Contact the rental agency responsible for the property where the licensee was located, if applicable.

(5) Visit the licensee's last known address to see whether the building superintendent or a neighbor knows the licensee's new address.

(6) Mail a certified letter with return receipt to the licensee at the last known address with the endorsement ''Forwarding and Address Correction Requested.''

(7) If new address information is obtained during these steps, any scheduled Product/Device inspection must be completed promptly.

(b) If a Product/Device is reported to be lost or stolen by the licensee, the Provider must, at a minimum, complete the following actions:

(1) Ensure that the licensee has filed a police report and that copies have been provided to the appropriate Inspection Service Contraband Postage Identification Program (CPIP) specialist.

(2) Withhold issuance of a replacement Product/Device until the missing Product/Device has been properly reported to the police and to the appropriate Inspection Service CPIP specialist.

(c) If the Provider later learns that the Product/Device has been located and/or recovered, the Provider must update lost and stolen Product/Device activity records, inspect the Product/Device promptly, initiate a postage adjustment or transfer, if appropriate, and check the Product/Device out of service if a replacement Product/Device has been supplied to the licensee.

(d) If a Product/Device reported to the Postal Service as lost or stolen is later located, the Provider is responsible for submitting a new Lost and Stolen Product/Device Incident Report that references the initial report and outlines the details of how the Product/Device was recovered. This report must be submitted to the Postal Service within 30 days of recovery of the Product/Device. The Provider is also responsible for purging lost and stolen Product/Device reports that are provided on a periodic basis to the Postal Service for those Product/Devices that have been recovered.

(e) Any authorized Provider that fails to comply with standardized lost and stolen reporting procedures and instructions is subject to an administrative sanction under § 502.22, as determined by the Postal Service.

§ 502.26 Computerized Remote Postage Meter Resetting/PSD Resetting.

(a) *Description.* The Computerized Remote Meter Resetting System (CMRS) permits postal licensees to reset PSDs at their places of business and/or homes via modem and/or network interface. To reset a PSD, the licensee must connect to the Provider and provide identifying data and device audit data. Before proceeding with the setting transaction, the Provider must verify all the data (including conducting the product audit) and ascertain from its own files whether the licensee has sufficient funds on deposit with the Postal Service. If the funds are available and the product audit was successful, the Provider may complete the setting transaction.

(b) *Deposits with the Postal Service.* (1) A CMBS licensee is required to have funds available on deposit with the Postal Service before resetting a PSD or the Provider may opt to provide a funds advance in accordance with *The Cash Management Operating Specifications For The Computerized Remote Postage Meter Resetting System.* Contact the Treasurer's Office of the United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–5130 for this document. The details of this deposit requirement are covered within the Acknowledgment of Deposit Requirement document. By signing this document, the licensee agrees to transfer funds to the Postal Service through a lockbox bank, as specified by the Provider, for the purpose of prepayment of postage. The Provider representative must provide all new CMRS licensees with this document when a new account is established. The document must be completed and signed by the licensee and sent to the Minneapolis Accounting Service Center by the Provider.

(2) This is required to incorporate the following language into its Product/Device rental agreements:

Acknowledgement of Deposit Requirement

See The Cash Management Operating Specifications For The Computerized Remote Postage Meter Resetting System. Contact the Treasurer's Office of the United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–5130 for this document.

§ 502.27 Indicia quality assurance.

The licensee is required to forward a mailpiece to the Provider at least once every 3 months for evaluation. If the licensee fails to comply with this requirement, the Provider must notify the licensee that, all future postage value resettings will be denied. The Provider must notify the Postal Service of all noncomplying licensees, so that license revocations can be initiated. The Provider is required to provide guidance to the licensee to correct any deficiencies that are discovered.

§ 502.28 Product/Device refunds.

Postage losses due to malfunctions are the responsibility of the Provider. In order to receive a refund for any remaining balance on a PSD, the licensee will be required to submit a written refund request and the PSD to the Provider. Additionally, supporting documentation such as a daily activity report must be submitted. The Postal Service will also provide refunds to a licensee for any balance remaining in their CMRS account.

§ 502.29 Key management requirements.

These requirements are contained in The Information Based Indicia Program Key Management Plan. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

§ 502.30 Provider infrastructure.

The Provider must establish and maintain an interface to USPS systems as specified in the Information Based

Indicia Program Product/Service Provider Infrastructure Specification. Contact the Manager, Retail Systems and Equipment, USPS, 475 L'Enfant Plaza, Washington DC 20260–6807 for these requirements.

§ 502.31 Notice of Proposed Changes in Regulations.

Appropriate amendments to 39 CFR parts 111 and 502 to reflect these changes will be published if the proposal is adopted

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–7861 Filed 3–27–97; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI38–01–6734; FRL–5803–2]

Approval And Promulgation Of Implementation Plans: Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve requested State Implementation Plan (SIP) revisions submitted by the State of Michigan for the purpose of transferring the authority of the Michigan Air Pollution Control Commission (Commission) to the Director of the Michigan Department of Natural Resources (MDNR) and subsequently transferring the authority of the Director of MDNR to the Director of the Michigan Department of Environmental Quality (MDEQ). Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

DATES: Comments on this proposed rule must be received in writing on or before April 28, 1997. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

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

Copies of the Michigan SIP revision request and EPA's analysis are available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Laura Gerleman, Air Programs Branch, Permits and Grants Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5703.

Copies of the State of Michigan's final authorization revision application are available during normal business hours at the following addresses for inspection and copying: Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan. To arrange for access to the materials in Lansing, call (517) 373–9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call (906) 227–2260 between 8 a.m. and 12 a.m. on Mondays through Thursdays, between 8 a.m. and 9 p.m. on Fridays, and between 10 a.m. and 6 p.m. on Sundays (Eastern time); in Detroit, call (313) 833–1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time). Anyone wishing to come to the Region 5 offices should contact Laura Gerleman first.

SUPPLEMENTARY INFORMATION:

A. Executive Order 1991–31

On November 8, 1991, Governor John Engler of Michigan signed Executive Order 1991–31 which, inter alia, abolished the Commission and transferred the authority of the Commission to the Director of MDNR. The State of Michigan submitted to EPA under a December 13, 1994 cover letter, a SIP revision request containing the transfer of authority of the Commission to the Director of MDNR. The EPA deemed the submittal complete in a February 16, 1995 letter to Roland Harmes, Director, MDNR.

B. Executive Order 1995–18

On July 31, 1995, Governor Engler signed Executive Order 1995–18 which, inter alia, elevated eight program divisions and two program offices from within MDNR to the MDEQ, effective October 1, 1995. The authority given to the Director of MDNR in Executive Order 1991–31 was conferred upon the Director of MDEQ in Executive Order 1995–18, with the exception of administrative appeals decisions. For administrative appeals where the Director of MDEQ made the original permit decision, Executive Order 1995–18 requires the Director to appoint an individual within or outside MDEQ to decide the appeal.

The State of Michigan submitted Executive Order 1995–18 to EPA under a January 19, 1996 cover letter as a supplement to the December 13, 1994 SIP revision.

C. Authority

The EPA proposes to approve Michigan's requested SIP revisions as reorganizations of Michigan's environmental agencies wherein the authorities of the Director of the Commission under the SIP have been conferred upon the Director of MDEQ by Executive Order. Public comment is solicited on the requested SIP revision and on EPA's proposed approval of the request. Public comments received by the date indicated above will be considered in the development of EPA's final rule.

The EPA notes that it is currently reviewing the Michigan Environmental Audit Privilege and Immunity Law, Public Act 132 of 1996, and its potential impact on Michigan's federally delegated and authorized programs, including programs under the Federal Clean Air Act. The EPA's proposed approval only addresses and seeks comments on the requested SIP revisions submitted by Michigan that result from Executive Order 1991–31 and Executive Order 1995–18. The EPA's proposed approval of requested revisions to Michigan's SIP arising out of these two Executive Orders does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's SIP resulting from Public Act 132 of 1996.

Administrative Requirements

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small

entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *EPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments. This rule imposes no additional regulatory burden.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671(q).

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–7818 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 123

[FRL–5803–3]

Modification of Michigan's Approved Program to Administer the National Pollutant Discharge Elimination System Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval; request for public comment.

SUMMARY: This document announces EPA's intention to approve modification of Michigan's approved National Pollutant Discharge Elimination System (NPDES) permitting program, specifically, to explicitly and formally recognize that a recent internal reorganization of Michigan's environmental agencies is consistent with the minimum requirements of the State NPDES program regulations. EPA invites public comment on its approval of any modification of the State program that may have resulted from the reorganization.

DATES: Comments on this document must be received in writing by April 28, 1997.

ADDRESSES: Written comments on this document may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan NPDES Modification, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: chaiken.eugene@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Central time) April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Eugene Chaiken, Chief, NPDES Support and Technical Assistance Branch at the EPA address noted above or telephone at (312) 886–0120.

A copy of the supporting information for today's notice is available for review at: EPA, Region 5, 77 West Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; and the Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886–0120 between 8 a.m. and 4:30 p.m. (Central time)(Monday–Friday); in Lansing, call (517) 373–9489 between 9 a.m. and 6 p.m. (Eastern time)(Monday–Saturday), and between 12 p.m. and 4 p.m. (Eastern time)(Sunday); in Marquette, call (906) 227–2260 for current library hours; and in Detroit, call (313) 833–1440 between 9:30 a.m. and 5:30 p.m. (Eastern time)(Tuesday, Thursday–Saturday), and between 1 p.m. and 9 p.m. (Eastern time)(Wednesday).

The supporting information for today's notice includes: copies of Executive Orders 1991–31, 1995–4, and 1995–18 signed by the Governor of Michigan on November 8, 1991, February 7, 1995, and July 31, 1995, respectively; copies of the correspondence from Michigan to EPA dated August 9, 1995 and January 19, 1996, regarding the effects of the Executive Orders on Michigan's NPDES program; statements of the Michigan Attorney General dated August 2, 1995, and June 13, 1996; an October 24, 1996, letter from the Director of MDEQ regarding MDEQ's compliance with Clean Water Act conflict of interest requirements; NPDES program documents submitted in support of Michigan's original (1973) request for EPA approval; a June 14, 1996, letter from the Michigan Environmental Council to EPA regarding Michigan Public Act 132 of 1996; and EPA's preliminary finding of no substantial revisions and preliminary approval of any revisions resulting from the Executive Orders.

SUPPLEMENTARY INFORMATION: On October 17, 1973, EPA approved the National Pollutant Discharge Elimination System (NPDES) permitting program submitted by the State of Michigan pursuant to section 402 of the

Clean Water Act. Procedures for revision of State programs at 40 CFR 123.62 provide for EPA review of any revisions to federally authorized State NPDES programs to determine whether or not such revisions are substantial and to approve or disapprove any such revisions.

On November 8, 1991, the Governor of Michigan issued Executive Order 1991–31, intended to reorganize and consolidate functions and responsibilities of the Michigan environmental agencies. Though initially stayed in the Michigan court system, the Michigan Supreme Court ultimately upheld the validity of Executive Order 1991–31 on September 2, 1993. *Dodak* v. *Engler*, 443 Mich. 560, 506 N.W.2d 190 (1993). Subsequently, the Governor issued additional Executive Orders (Executive Orders 1995–4 and 1995–18) related to the organization, functions, and responsibilities of the Michigan environmental agencies.

On May 21, 1993, Michigan submitted a modification to the approved program seeking EPA recognition of the State's authority to issue NPDES general permits. On November 29, 1993, EPA approved the modification. The National Wildlife Federation and the Michigan United Conservation Clubs filed a petition in the U.S. Court of Appeals for the Sixth Circuit for judicial review of EPA's approval of the modification. By joint motions of the parties, that litigation is currently stayed while, among other things, EPA publishes today's notice and, ultimately, takes final action on it.

EPA announces today that it has made preliminary determinations that Executive Orders 1991–31, 1995–4 and 1995–18 did not make any substantial changes in Michigan's approved NPDES program, and that any changes to the Michigan NPDES program resulting from these Executive Orders should be approved. While not required to do so according to the State NPDES program regulations, EPA invites public comment concerning the Agency's conclusions, specifically, its preliminary determination that the Executive Orders caused no substantial revisions to Michigan's NPDES program, as well as EPA's preliminary decision to approve any revisions to Michigan's NPDES program that resulted from the Executive Orders. Additionally, EPA requests specific comment on the impact, if any, the Executive Orders have on EPA approval of the modification to the Michigan NPDES program recognizing the State's authority to issue general permits. EPA may conduct a public hearing, if there is significant public interest based on requests received.

EPA notes that the Michigan Environmental Council (MEC) filed an administrative petition requesting that EPA commence proceedings to withdraw Michigan's NPDES program by letter dated June 14, 1996. The petition requests that EPA initiate proceedings to withdraw its approval of Michigan's NPDES program based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the State's natural resources and environmental protection code. In response to the petition, EPA is conducting an informal investigation into the allegations in the petition. Specifically, EPA has initiated a separate process to review Michigan's Public Act 132 of 1996 and its potential impact on Michigan's federally delegated and authorized programs, including NPDES, to determine whether there is cause to commence withdrawal proceedings.

EPA's preliminary decision only addresses, and this notice is only seeking comment on, the impact of the Executive Orders noted above on Michigan's NPDES program. EPA's preliminary decision does not address the issues raised by MEC regarding Public Act 132 of 1996. EPA intends to address those issues in the course of the separate informal investigations into the allegations in the petition to commence withdrawal proceedings. Although EPA does not seek and does not intend to respond on the merits to comments regarding Public Act 132 of 1996 in this proceeding, EPA will consider such public comments in responding to the Petition to commence withdrawal proceedings. Any such comments should be sent separately to John Bernstein, Attn: Michigan Petition to Withdraw, U.S. Environmental Protection Agency, Mail Code: WN–16J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Regulatory Assessment Requirements

Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted EPA action on State NPDES programs from OMB review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

If EPA finally determines that any revisions to Michigan's NPDES program resulting from the Executive Orders should be approved, EPA's determination would contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination would merely recognize an internal reorganization of an existing approved NPDES State program. EPA has determined that such a determination would not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, such a determination would not be subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA

regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's NPDES program resulting from the Executive Orders would merely recognize an internal reorganization of an existing approved NPDES State program, EPA has determined that such a determination would contain no regulatory requirements that might significantly or uniquely affect small governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. § 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. §§ 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's NPDES program resulting from Executive Orders would not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval would simply result in an administrative change in the structure of the approved NPDES program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. Such an approval would not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the NPDES program modification would not impose any new burdens on small entities.

Paperwork Reduction Act

This preliminary determination contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–7819 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 233

[FRL–5803–4]

Modification of Michigan's Assumed Program to Administer Section 404 Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval; request for public comment.

SUMMARY: This document announces EPA's intention to approve modification of Michigan's assumed Clean Water Act Section 404 (Section 404) permitting program, specifically, to explicitly and formally recognize that a recent internal reorganization of Michigan's environmental agencies is consistent with the minimum requirements of the State Section 404 program regulations. EPA invites public comment on its approval of any modification of the State program that may have resulted from the reorganization.

DATES: Comments on this document must be received in writing by April 28, 1997.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Michigan Section 404 Program Modification, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet Email address: pierard.kevin@epamail.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Central time) April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kevin Pierard, Chief, Watersheds and Non-Point Source Programs Branch, at the EPA address noted above or telephone at (312) 886–4448.

A copy of the supporting information for today's notice is available for review at: EPA, Region 5, 77 West Jackson Boulevard, 16th Floor, Chicago, Illinois; Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; and Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan. To arrange for access to the docket materials in Chicago, call (312) 886–4448 between 8 a.m. and 4:30 p.m. (Central time); in Lansing, call 517–373–9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call 906–227–2260 between 8 a.m. and 12 a.m. on Mondays through Thursdays, between 8 a.m. and 9 p.m. on Fridays, and between 10 a.m. and 6 p.m. on Sundays (Eastern time); and in Detroit, call 313–833–1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time).

The supporting information for today's notice includes: a copy of Executive Order 1995–18 signed by the Governor of Michigan on July 31, 1995; copies of the correspondence from Michigan to EPA dated January 19, 1996, regarding the effects of the executive order on Michigan's Section 404 program; a statement of the Michigan Attorney General dated June 13, 1996; Program documents submitted to EPA in support of Michigan's original (1983) assumption request; the materials submitted by Michigan and considered by EPA in approving revisions to Michigan's Section 404 program on November 25, 1994; May 20, 1994, comments submitted by the National Wildlife Federation and Michigan United Conservation Club to EPA which EPA is treating as a petition to withdraw Michigan's Section 404 program; a June 14, 1996, letter from the Michigan Environmental Council to EPA regarding Michigan Public Act 132 of 1996; a February 4, 1997, letter and attached report from the Michigan Environmental Council to EPA requesting that EPA withdraw Michigan's Section 404 program; and EPA's preliminary finding of no substantial modification and preliminary approval of any revisions resulting from Executive Order 1995–18.

SUPPLEMENTARY INFORMATION: The State of Michigan assumed Federal Clean Water Act Section 404 permitting authority on October 16, 1984. Procedures for revision of State programs at 40 CFR 233.16 require that EPA review any revisions to state assumed Section 404 programs, determine whether such revisions are substantial, and approve or disapprove the revisions.

On July 31, 1995 Governor Engler of Michigan issued Executive Order 1995–18, which elevated the former Environmental Protection Bureau of the

Michigan Department of Natural Resources (MDNR) to full independent departmental status as the Michigan Department of Environmental Quality (MDEQ). MDEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau in the MDNR, including its statutory and regulatory obligations and responsibilities to administer Michigan's federally approved CWA section 404 program.

EPA announces today that has made preliminary determinations that the executive order did not make any substantial changes in Michigan's Section 404 program, and that any changes to the Michigan program resulting from the executive order should be approved. While not required to do so according to the State section 404 program regulations, EPA invites public comment concerning the Agency's conclusions, specifically, its preliminary determination that the executive order caused no substantial revisions to Michigan's Section 404 program, as well as EPA's preliminary decision to approve any revisions to Michigan's Section 404 program that resulted from the executive order. EPA may conduct a public hearing, if there is significant public interest based on requests received.

EPA notes that it currently has pending before it a May 20, 1994, petition to withdraw that was filed by the National Wildlife Federation (NWF) and Michigan United Conservation Clubs (MUCC), as well as a February 4, 1997, petition to withdraw that was filed by the Michigan Environmental Council (MEC). EPA has commenced informal investigations into the allegations in those Petitions to determine whether there is cause to commence withdrawal proceedings.

EPA further notes that MEC, by letter dated June 14, 1996, has raised concerns regarding the impact of Michigan's recent enactment of Public Act 132 of 1996 on Michigan's Section 404 program. In response to that letter, EPA is currently conducting an informal investigation into Michigan's Public Act 132 of 1996 and its potential impact on Michigan's federally delegated and authorized programs, including Section 404.

EPA's preliminary decision only addresses, and this notice is seeking comment only on, the impact of the executive order noted above on Michigan's Section 404 program. EPA's preliminary decision does not address the issues raised by NWF, MUCC and MEC in their Petitions or by MEC regarding Public Act 132 of 1996. EPA intends to address those issues in the course of the separate informal investigations described above.

Regulatory Assessment Requirements

Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted EPA action on State Section 404 programs from OMB review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

If EPA finally determines that any revisions to Michigan's Section 404 program resulting from the executive order should be approved, EPA's determination would contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Instead, EPA's determination would merely recognize an internal reorganization of an existing assumed State Section 404 program. EPA has determined that such a determination would not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, EPA's determination would not be subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because EPA's determination to approve of any revisions to Michigan's Section 404 program resulting from the executive order would merely recognize an internal reorganization of an existing assumed State Section 404 program, EPA has determined that such a determination would contain no regulatory requirements that might significantly or uniquely affect small governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. § 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's Section 404 program resulting from the executive order will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval would simply result in an administrative change in the structure of the assumed Section 404 program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. Such an approval would not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the Section 404 program modification would not

impose any new burdens on small entities.

Paperwork Reduction Act

This preliminary determination contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–7820 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 271

[FRL–5803–1]

Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and public comment period.

SUMMARY: Michigan has applied for final authorization of revisions to its hazardous management program under the Resource Conservation and Recovery Act on 1976, as amended, (hereinafter RCRA) resulting from Michigan Executive Order 1995–18 (EO 1995–18). The Environmental Protection Agency (EPA) has reviewed Michigan's application and has reached a proposed decision, subject to public review and comment, that the hazardous waste management program revisions resulting from EO 1995–18 satisfy the requirements necessary to qualify for final authorization. Thus, EPA believes it is appropriate to approve these Michigan hazardous waste management program revisions. Michigan's application for program revision is available for public review and comment.

DATES: All comments on this proposed rulemaking must be received by close of business on April 28, 1997.

ADDRESSES: Written comments on this document may be submitted to Ms. Judy Feigler, U.S. EPA, State Programs and Authorization Section, Waste, Pesticides and Toxics Division (DR–7J), 77 West Jackson Blvd., Chicago, IL 60604–3590. In the alternative, U.S. EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: feigler.judith@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Central Time) April 28, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler at the EPA address noted above or telephone at (312) 886–4179.

Copies of the State of Michigan's final authorization revision application are available during normal business hours at the following addresses for inspection and copying: Library of Michigan, Government Documents Section, 717 West Allegan, Lansing, Michigan; Olson Library, Northern Michigan University, Harden Circle Drive, Marquette, Michigan; Detroit Public Library Main Branch, Sociology and Economics Department, 5201 Woodward Avenue, Detroit, Michigan; and Ms. Judy Feigler, U.S. EPA, State Programs and Authorization Section, Waste, Pesticides and Toxics Division (DR–7J), 77 West Jackson Blvd., Chicago, IL 60604-3590, or telephone (312) 886–4179. To arrange for access to the materials in Lansing, call (517) 373–9489 between 9 a.m. and 6 p.m. on Mondays through Saturdays and between 12 p.m. and 4 p.m. on Sundays (Eastern time); in Marquette, call (906) 227–2260 for current library hours; in Detroit, call (313) 833–1440 between 9:30 a.m. and 5:30 p.m. on Tuesdays and Thursdays through Saturdays, and between 1 p.m. and 9 p.m. on Wednesdays (Eastern time); and in Chicago, call (312) 886–4179 between 9 a.m. and 4:30 p.m. on Mondays through Fridays.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. When either EPA's or a State program's controlling statutory or regulatory authority is modified or supplemented, or when certain other changes occur, revisions to State hazardous waste management programs may be necessary. The procedures that States and EPA must follow for revision of State programs are found at 40 CFR 271.21.

The State of Michigan initially received final authorization for its hazardous waste management program effective on October 30, 1986 (51 FR 36804–36805, October 16, 1986). Subsequently, Michigan received authorization for revisions to its program, effective on January 23, 1990 (54 FR 225, November 24, 1989); June 24, 1991 (56 FR 18517, April 23, 1991); November 30, 1993 (58 FR 51244, October 1, 1993); and April 8, 1996 (61 FR 4742, February 8, 1996). Michigan's Program Description, dated June 30, 1984, and addenda thereto dated June 30, 1986; September 12, 1988; July 31, 1990; August 10, 1992; and March 22, 1995, which is a component of the State's original final authorization and subsequent revision applications, specified that the Michigan Department of Natural Resources (MDNR) was the agency responsible for implementing Michigan's hazardous waste management program. The Program Description indicated that the Site Review Board (SRB) also had authority to approve or deny construction permit applications. The SRB was subsequently made a consultative body and the SRB's powers were transferred to the Director of the MDNR by Executive Order 1991–31, which took effect on September 2, 1993.

On July 31, 1995, the Governor of Michigan issued Executive Order 1995–18 (EO 1995–18), which became effective on October 1, 1995. On January 19, 1996, Michigan submitted materials for EPA to determine the impact of EO 1995–18 upon the authorized State hazardous waste management program. The materials consisted of a letter from the Michigan Attorney General's office setting forth the State of Michigan's analysis as to why the establishment of the new Michigan DEQ does not represent a transfer to a ''new agency'' pursuant to 40 CFR 271.21(c), a copy of EO 1995–18, updated letters of delegation and procedures regarding avoidance of conflict of interest in contested case proceedings. On June 13, 1996, Michigan submitted a supplemental statement of the Michigan Attorney General regarding the appraisal of the Attorney General of the impact of EO 1995–18 on Michigan's delegated environmental programs. In the supplemental statement, the Attorney General explained that the effect of EO 1995–18 was to elevate the former Environmental Protection Bureau of the Department of Natural Resources to full independent departmental status as the Department of Environmental Quality (DEQ). According to the Michigan Attorney General, ''the DEQ retained all of its environmental responsibilities and virtually all of the personnel formerly assigned to it as a bureau of the DNR.''

The Attorney General further stated that ''E.O. 1995–18 did not substantively change the State's statutes or rules relating to the administration of federally delegated programs nor was any authority, power, duty or function contained within Michigan's statutes or rules applicable to federally delegated programs diminished by the execution of E.O. 1995–18. Specifically, E.O. 1995–18 did not affect program jurisdiction, the scope of activities regulated, criteria for the review of permits, public participation, enforcement capabilities or the adequacy of Michigan's legal authority to carry out its federally delegated programs.'

Based on the information available, EPA has determined that the reorganization of the State's hazardous waste management program resulting from EO 1995–18 constitutes a program revision requiring appropriate EPA review and approval under RCRA. EPA has also determined that the EO 1995–18 did not result in significant modification of Michigan's hazardous waste program, nor did the Order transfer any part of the program from the approved State agency to any other State agency. Therefore, EPA does not view the reorganization as a transfer within the purview of 40 CFR 271.21(c).

Consequently, EPA has made a proposed decision, subject to public review and comment, that Michigan's hazardous waste program revisions resulting from EO 1995–18 satisfy the requirements necessary to qualify for final authorization. The public may submit written comments on EPA's proposed decision making up until April 28, 1997. A copy of Michigan's application for program revision is available for inspection and copying as listed in the **ADDRESSES** section of this notice.

EPA wishes to note that it presently has pending before it a request, submitted in a letter dated June 14, 1996 by the Michigan Environmental Council (MEC), to revoke Michigan's National Pollution Discharge Elimination System (NPDES) and Prevention of Significant Deterioration (PSD) program approvals, not grant additional program delegations and not grant program approval for Boiler and Industrial Furnace revisions under RCRA. This request is based upon Michigan's recent enactment of Public Act 132 of 1996, which establishes certain environmental audit privilege and immunity provisions in the state's natural resources and environmental protection code. In response to the request, EPA is currently in the process of reviewing Public Act 132 of 1996 and its potential impact on Michigan's federally delegated, approved and authorized programs, including RCRA. EO 1995–18 predated passage of Act 132.

EPA's proposed action today only addresses and seeks comment on the impact of EO 1995–18 noted above on Michigan's RCRA program. EPA's decision to preliminarily approve of revisions to Michigan's RCRA program arising out of EO 1995–18 does not express any viewpoint on the question of whether there are legal deficiencies in Michigan's RCRA program resulting from Public Act 132 of 1996, which was enacted after this Executive Order was issued. EPA will subsequently address the issues raised by MEC regarding Public Act 132 of 1996 in responding to the MEC request.

Approval of Michigan's program revision shall become effective upon publication of the Regional Administrator's final approval in the **Federal Register**. If adverse comment pertaining to Michigan's program revision is received during the comment period, EPA will publish either: (1) A notice of disapproval; or (2) a final approval of the modifications, which would include appropriate comment response.

If final approval is granted, Michigan will maintain final authorization to operate its hazardous waste management program, as revised by EO 1995–18. Michigan will continue to have responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Michigan also will maintain primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Michigan is not seeking authority to operate the Federal program on Indian lands. This authority will remain with EPA unless provided otherwise in a future statute or regulation.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has exempted this action from E.O. 12866 review.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Today's proposal would contain no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Today's proposal would merely recognize an internal reorganization of an existing approved RCRA State program. EPA has determined that this proposal would not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, today's proposal is not subject to the requirements of section 202 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Because

today's proposal would merely recognize an internal reorganization of an existing approved RCRA State program, EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604 & 605. The Regional Administrator today certifies, pursuant to section 605(b) of the RFA, that approval of any revisions to Michigan's RCRA program resulting from the reorganization of the Michigan environmental agencies will not have a significant impact on a substantial number of small entities.

The basis for the certification is that EPA's approval would simply result in an administrative change in the structure of the approved RCRA program, rather than a change in the substantive requirements imposed on any small entity in the State of Michigan. Such an approval would not affect the substantive regulatory requirements under existing State law to which small entities are already subject. Additionally, approval of the RCRA program modification would not impose any new burdens on small entities.

Paperwork Reduction Act

The proposal contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 14, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–7817 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 799

[OPPTS–42187F; FRL–5598–4]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period on Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on proposed test rule.

SUMMARY: EPA is extending the public comment period from April 30, 1997 to June 30, 1997 on the proposed rule to require the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This proposed rule was published in the **Federal Register** on June 26, 1996 (61 FR 33178)(FRL–4869–1). On February 28, 1997, EPA extended the public comment period from March 31, 1997 to April 30, 1997 (62 FR 9142)(FRL–5592–1).

DATES: Written comments on the proposed rule must be received by EPA on or before June 30, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by document control number (OPPTS–42187A; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

A public version of the official rulemaking record supporting this action, excluding confidential business information (CBI), is available for inspection at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460, from 12 noon to 4 p.m., Monday through Friday, except on legal holidays.

All comments that contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information that they believe is entitled to treatment as CBI must assert a business confidentiality claim in accordance with 40 CFR part 2. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will treat the information as non-confidential and may make it available to the public without further notice to the submitter.

Comments and data may also be submitted in electronic form by sending electronic mail (e-mail) to: oppt-ncic@epamail.epa.gov. Such comments and data must be submitted in 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 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by (OPPTS–42187A)(FRL–4869–1). No information claimed as CBI should be submitted through e-mail. Comments in electronic form may be filed online at many federal depository libraries.

The official record for this rulemaking, as well as the public version, will be maintained in paper form. EPA will transfer all comments received electronically into paper form and will place the paper copies in the official record. The official record is the paper record maintained at the address listed at the beginning of the ''ADDRESSES'' section of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For technical information contact: Richard W. Leukroth, Jr , Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA invited the submission of proposals for

pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforcable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996 to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of PK proposals and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. EPA received several PK proposals. Due to the complexity of the issues raised by these proposals, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997) to allow the Agency more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule.

The HAPs proposed rule published on June 26, 1996 (61 FR 33178) provides that testing would be conducted using the harmonized guidelines developed by the Office of Prevention, Pesticides, and Toxic Substances (OPPTS) that were proposed on June 20, 1996 (61 FR 31522)(FRL–5367–7). The process of developing these guidelines is proceeding at the same time as the development of the HAPs test rule. For the purposes of the proposed HAPs test rule and testing under TSCA section 4(a), the Office of Pollution Prevention and Toxics (OPPT) intends to promulgate final TSCA test guidelines. The Agency will solicit public comment on the applicability of the test guidelines to the HAPs rule and will follow this practice with respect to all future TSCA section 4(a) test rules. These guidelines will be published in the **Federal Register** on or before May 30, 1997.

In addition, there has been a delay in finalizing Agency reviews of the PK proposals. EPA intends to provide comments to all submitters of PK proposals as soon as possible but, at any event prior to the close of the comment period. EPA also recognizes that submitters may need to revise their proposals based on EPA comments. In addition, the Agency believes that the public should have adequate opportunity to comment on the development of ECAs based on the PK proposals. If the Agency finds the original or revised PK proposals acceptable, EPA will therefore announce, in the **Federal Register**, one or more public meetings to discuss the proposals and to negotiate ECAs based on the proposals. In that notice, the Agency will solicit persons interested in participating in or monitoring negotiations for the development of ECAs based on the revised PK testing proposals. These negotiations will be conducted under the process described in subpart B of 40 CFR part 790.

The Agency emphasizes that the submission of proposals to develop ECAs to conduct alternative testing using PK is no guarantee that EPA and the submitters will, in fact, conclude such agreements. Therefore, EPA urges all submitters of PK proposals to comment on the HAPs proposed rule as an activity separate from the PK proposal/ECA process. Comments on the proposed rule should be submitted as described in the ''ADDRESSES'' section of this document prior to the close of the comment period.

Accordingly, EPA is extending the comment period on the proposed rule to June 30, 1997.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 24, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–7815 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–808–P]

RIN 0938–AG70

Medicare and Medicaid Programs; Salary Equivalency Guidelines for Physical Therapy, Respiratory Therapy, Speech Language Pathology, and Occupational Therapy Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth proposed revisions to the salary equivalency guidelines for Medicare payment for the reasonable costs of physical therapy and respiratory therapy services furnished under arrangements by an outside contractor. The proposed rule also sets forth proposed new salary equivalency guidelines for Medicare payment for the reasonable costs of speech language pathology and occupational therapy services furnished under arrangements by an outside contractor. The proposed guidelines do not apply to inpatient hospital services and hospice services. The guidelines would be used by Medicare fiscal intermediaries to determine the maximum allowable cost of those services.

The guidelines will not be effective until at least 60 days after the date of publication of the final rule. However, to illustrate how the schedules would operate, we have calculated the proposed revised schedules for physical respiratory therapy services and proposed new schedules for speech-language pathology and occupational therapy services as if the guidelines were effective on April 1, 1997.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 27, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–808–P, PO. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to the following address: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3206, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt.

In commenting, please refer to file code BPD–808–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday

through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Comments may also be submitted electronically to the following e-mail address: BPD–808–NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jackie Gordon, (410) 786–4517.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(5) of the Social Security Act (the Act) requires the Secretary to determine the reasonable cost of services furnished to Medicare beneficiaries ''under an arrangement'' with a provider of services, by therapists or other health-related personnel. The Health Care Financing Administration (HCFA) pays the provider directly for these services, rather than paying the therapist or supplying organization. Under section 1861(w)(1) of the Act, this payment discharges the beneficiary from liability to pay for the services. Section 1861(v)(5) of the Act also specifies that the reasonable costs for these services may not exceed an amount equal to the salary that would reasonably have been paid for the services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with a provider or other organization (rather than under such arrangement), plus allowances for certain expenses that may be incurred by the contracting therapy organization in furnishing the services as the Secretary in regulations determines to be appropriate.

These statutory requirements are implemented in existing regulations at 42 CFR 413.106. The regulations apply to the services of physical, occupational, speech, and other therapists and services of other health specialists (other than physicians) furnished under arrangements with a provider of services, a clinic, a rehabilitation agency, or a public health agency. The regulations provide for:

- Hourly salary equivalency amounts comprised of:

—A prevailing hourly salary rate based on the 75th percentile of the range of salaries paid to full-time employee therapists by providers in the geographic area, by type of therapy.

—Fringe benefit and expense factors to take into account fringe benefits generally received by an employee therapist, as well as expenses (such as maintaining an office, insurance, etc.) that a therapist or therapist organization might incur in furnishing services under arrangements.

- A standard travel allowance to recognize time spent in traveling to the provider's site or the patient's home.

- As provided for in existing regulations at § 413.106(e) and explained in section 1412 of the Provider Reimbursement Manual, the following are additional allowances for costs incurred for services furnished by an outside supplier. In addition to the guidelines established for the adjusted hourly salary equivalency amount and the travel allowance, the following costs incurred for services furnished by an outside supplier are recognized, provided the services are properly documented as having been received by the provider.

—Overtime, if an outside supplier utilizes the services of its employees (including the services of aides and assistants) at an individual provider in excess of the provider's standard workweek;

—Administrative and supervisory duties, if an outside supplier provides more than one therapist and at least one therapist spends more than 20 percent of his or her time supervising other therapists and performing administrative duties;

—Depreciable or leased equipment, including maintenance costs of equipment remaining at the provider's site, that the outside supplier uses in furnishing direct services to the provider's patients (may also include equipment that is transported from one provider site to another but excludes equipment owned by the provider);

—Supplies furnished by the supplier for direct patient care (e.g., gases and sprays for respiratory therapy), excluding items such as envelopes, stamps, and typewriters that are reimbursed as overhead expenses and included in the fringe benefit and expense factor;

—Travel expenses, based on 10 times the General Services Administration mileage rate for each day an outside supplier travels to a provider site;

—Aides, who are paid as an add-on based on the wage rate of a comparable employee, such as a nurse's aide (all therapy types use aides); (Because we have received several inquiries regarding continuing to use wages of providers'' nurses aides as the basis for comparison, we welcome comments on other methods for determining guidelines for aides.)

—Assistants, who are paid as a function of the hourly salary equivalency amount at 75 percent of these amounts. (All therapy types use assistants except respiratory therapists.)

The provider must supply the intermediary with documentation that supports these additional costs to the intermediary's satisfaction. These are the only additional costs that will be recognized.

The regulations at 42 CFR 431.106 (b)(5) and (c) also provide for an exemption for limited part-time or intermittent services if the provider required the services of an outside supplier for a particular type of therapy service and the total hours of services performed for the provider, by type of service, average less than 15 hours per week for those weeks in the cost reporting period during which services were furnished by nonemployee therapists. (Travel time is not counted in the computation, even if the actual time is used.) If a provider qualifies for this exemption, the reasonable cost of such services is evaluated on a reasonable rate per unit of service basis, except that payment for these services in the aggregate, during the cost reporting period, may not exceed the amount that would be allowable had the provider purchased these services on a regular part-time basis for an average of 15 hours per week for the number of weeks in which services were furnished. Where the contract provides for a method of payment other than rate per unit of service (e.g., hourly rate or percentage of charges), payment cannot

exceed the guideline adjusted hourly amounts plus other allowable costs, even though the services are performed on a limited or intermittent part-time basis.

In addition, the regulations at § 413.106(f)(1) currently provide for an exception because of a binding contract. An exception may be granted to a provider that entered into a written binding contract with a therapist or contracting organization prior to the date the initial guidelines are published for a particular type of therapy. This exception would not apply to physical and respiratory therapy services furnished under arrangements because we have previously published initial guidelines for these services. Before the exception may be granted, however, the provider must submit the contract to its intermediary, subject to review and approval by the HCFA regional office. This exception may be granted for the contract period, but no longer than 1 year from the date the guidelines for the particular therapy are published. During the period in which a binding contract exception is in effect, the cost of the services will be evaluated under the prudent buyer concept. (Section 1414.1 of the Provider Reimbursement Manual contains instructions on this exception.) This exception does not apply to providers who enter into a contingency contract with a therapist or contracting organization or another provider. In a contingency contract, the provider and contractor agree that if Medicare does not reimburse the provider for the rate that the contract is set at the provider and contractor agree that the contractor will make up the difference. We do not consider a contingency contract a binding contract.

Also, the regulations at § 413.106(f)(2) provide for an exception for unique circumstances or special labor market conditions. An exception may be granted when a provider demonstrates that the costs for therapy services established by the guidelines are inappropriate to a particular provider because of some unique circumstances or special labor market conditions in the area. As explained in section 1414.2 of the Provider Reimbursement Manual, exceptions will be granted only in extraordinary circumstances. Before the exception may be granted, the provider must submit appropriate evidence to its intermediary to substantiate its claim. The provider's request for an exception, together with substantiating documentation, must be submitted to the intermediary each year, no later than 150 days after the close of the provider's cost reporting period. Because providers had been required to submit cost reports to intermediaries no later than 90 days after the close of their cost reporting periods, we had required that the provider's request for an exception, together with substantiating documentation, also be submitted to the intermediary no later than 90 days after the close of its cost reporting period. On June 27, 1995 (60 FR 33137), we changed the due date for submission of cost reports to 150 days after the close of the provider's cost reporting period. Accordingly, as explained under Section II.F. of this preamble, we are proposing to revise the time period for a provider's request for an exception, together with substantiating documentation, to 150 days after the close of its cost reporting period. If the circumstances giving rise to the exception remain unchanged from a prior cost reporting period, however, the provider need only submit evidence to the intermediary 150 days after the close of its cost reporting period to establish that fact.

In order to establish an exception for unique circumstances, the provider must submit evidence to establish that it has some unique method of delivering therapy or other services, which affects its costs, that is different from the other providers in the area. The exception will be effective no earlier than the onset of the unique circumstances.

In order to substantiate an exception for special labor market conditions, the provider must submit evidence enabling the intermediary to establish that the going rate in the area for a particular type of service is higher than the guideline limit and that such services are unavailable at the guideline amounts. It is the duty of the provider to prove to the satisfaction of the intermediary that it has reasonably exhausted all possible sources of this service without success.

The intermediary collects information on the rates that other providers in the area generally pay therapists or other health care specialists. Once this information is collected, the intermediary will determine whether other providers in the area, in comparison to the provider requesting the exception, generally pay therapists or other health care specialists higher rates than the guideline amounts. (As discussed in section II.F.3. of this notice, we specifically invite comments on the exception process.)

Under § 413.106(b)(6), HCFA issues guidelines establishing the hourly salary equivalency amounts in geographical areas for therapy services furnished to Medicare beneficiaries under arrangements. These guidelines apply only to the amount of payment the Medicare program makes to a provider for therapy services obtained under arrangements. The guidelines are not intended to dictate or otherwise interfere in the terms of a contract that a provider may wish to enter into with a therapist or therapist organization. The guidelines do not apply to services furnished by employees of a hospital or employees of other providers. There is also an exception to the guidelines for inpatient hospital services provided by hospitals paid under the prospective payment system or subject to rate of increase limits (§ 413.106(f)(4), in which case the services are evaluated under the Medicare program's reasonable cost provisions as described at § 413.5). However, as explained under section II.F. of this preamble, we are proposing regulations that would provide that the salary equivalency guidelines will apply in situations where compensation, at least in part, to a therapist employed by the provider is based on a fee-for-service or on a percentage of income (or commission). The entire compensation would be subject to the guidelines in cases where the nature of the arrangements are most like an under ''arrangement'' situation, although technically the provider may treat the therapists as employees. The guidelines would be applied in this situation so that an employment relationship is not being used to circumvent the guidelines. The guidelines would apply to skilled nursing facilities (SNFs) providing therapy services under arrangements that elect prospective payment under section 1888(d) of the Act because that prospective payment system only applies to routine and capital services and does not apply to ancillary services which include therapy services.

Section 413.106(d) provides that, prior to the beginning of a period to which a guideline will be applied, HCFA will publish a notice in the **Federal Register** establishing the guideline amounts to be applied to each geographical area by type of therapy. We have issued schedules of salary equivalency guidelines for the reasonable costs of physical therapy services since 1975, and for respiratory therapy services since 1978. On September 30, 1983, we published a final notice (48 FR 44922) that revised the methodology used to establish the schedules, as well as the guidelines themselves. The guidelines continue to apply to physical therapy and respiratory therapy services provided under arrangements, as set forth in § 413.106, with hospitals, home health agencies (HHAs), SNFs, hospital-based HHAs, hospital-based SNFs,

comprehensive outpatient rehabilitation facilities (CORFs), and outpatient rehabilitation providers (ORPs). (Since we are now proposing to issue guidelines for occupational therapists, the guidelines will also apply to community mental health centers that provide occupational therapy services furnished under arrangements.)

The September 30, 1983 final notice provided that, for providers with cost reporting periods beginning after October 1, 1982, the published guidelines would be revised upward by the projected 0.6 percent monthly inflation rate, not compounded. It also provided that, if for any reason we did not publish a new schedule of guidelines to be effective for cost reporting periods beginning on or after October 1, 1983 or did not announce other changes in the existing schedule, the existing guidelines would remain in effect, increased by the projected 0.6 percent monthly inflation rate, not compounded, until a new schedule of guidelines was issued. This monthly inflation rate was based on a Data Resources Incorporated (DRI) forecast of the annual rate of increase in each component of the salary equivalency amounts (that is, salary, fringe benefits, rent, and other expenses), with each component weighted to form a composite rate of increase for the 12-month period ending March 31, 1984.

Since the last schedules of guidelines were issued in 1983, we have received periodic comments on the methodology used to develop the guidelines. Some of the issues raised in these comments concerned limitations in the data available to us on therapists' salaries and other expenses incurred in furnishing services under arrangements with providers. We have received comments that payments for therapy services performed in different provider settings and in urban and rural areas differ and that the guidelines should reflect those differences. Other commenters have expressed concern that the factors used to update the fringe benefits and expense factors are not adequate. In addition, some commenters raised concerns about more technical aspects of the methodology, such as the method used to update the salary equivalency amounts to account for inflation. We address all these concerns in this proposed rule.

We have never issued schedules of salary equivalency guidelines for speech language pathology and occupational therapy services provided under arrangements even though section 1861(v)(5) of the Act explicitly authorizes the Secretary to do so. Currently, payment for these services is based on reasonable cost. However, we are aware that without introducing guidelines for contracted speech-language pathology and occupational therapy services, the Medicare program could be paying for costs that are unreasonable and in excess of what Congress intended under section 1861(v)(5) of the Act. In fact, as evidence of this, the General Accounting Office (GAO) Report, ''Medicare: Tighter Rules Needed to Curtail Overcharges for Therapy In Nursing Homes'' (GAO/HEHS–95–23, March 1995) also found that nursing homes may be claiming substantial amounts of unallowable or unreasonable costs, or both, for therapy services provided to Medicare beneficiaries. The GAO recommended ways that HCFA could curb Medicare losses on payments for rehabilitation therapies provided to nursing home residents. GAO concluded that, without salary equivalency guidelines for all therapy services provided under arrangements to nursing homes, Medicare has little control over payments to providers. In response to GAO's recommendations, we indicated that, until guidelines were developed for all therapy services, providers' therapy costs were subject to the test of reasonableness as required by regulations at 42 CFR 413.9. We also indicated that we were working on developing revised salary equivalency guidelines for physical therapy and respiratory services and developing guidelines for speech-language pathology and occupational therapy services.

II. Provisions of the Proposed Rule

In this proposed rule, we would revise the methodology for establishing the schedules for the maximum payment for physical therapy and respiratory therapy services. We propose to revise the determination of reasonable cost for physical therapy and respiratory therapy furnished under arrangements by an outside contractor by rebasing the guideline amounts.

We also propose to establish salary equivalency guidelines for speech language pathology and occupational therapy services furnished under arrangements by an outside contractor using the same methodology we propose to use for determining reasonable cost for physical therapy and respiratory therapy services.

In addition, we are proposing to: (1) Eliminate the exception to the salary equivalency guidelines for a provider that entered into a written binding contract with a therapist or contracting organization prior to the date the initial guidelines are published; (2) apply the salary equivalency guidelines in situations where compensation, at least in part, to a therapist employed by the provider is based on a fee-for-service or on a percentage of income (or commission). (Section II.F. of this preamble contains a detailed discussion of these proposals and other proposals we're seeking comments on.)

A. Data Sources for Schedules

In all previously issued salary equivalency guideline notices, we have used the Bureau of Labor Statistics (BLS) hospital and nursing home industry wage survey data as our sole source in accordance with the Senate Committee on Finance recommendation (S. Rept. No. 1230, 92nd Cong., 2nd Sess. 251 (1972)). Specifically, the Committee recommended that, to the extent feasible, timely and accurate salary data compiled by BLS on the 75th percentile of salaries should be used in determining the prevailing salary amounts. However, in this proposed rule we have decided not to use the BLS data as our sole, or even as our primary source for developing the guidelines. We have a number of reasons for this decision.

First, BLS issued its last hospital industry wage surveys in 1989 and 1991 and has discontinued conducting its survey of hospital wages. Accordingly, even if we had chosen to use BLS survey data as our primary source for this proposed rule, we would have needed to investigate other therapy survey data sources for use in future guidelines. In addition, although, the BLS survey data continue to meet the rigorous publication standards of BLS and provide the only national data that we are aware of for wages by occupation that are statistically reliable, questions have been raised as to whether the BLS data meet the Senate Committee on Finance's recommendation on timeliness. We have taken this concern into consideration in this proposed rule. Furthermore, the BLS hospital industry wage surveys of 1989 and 1991 include only hospital data. (The last BLS nursing home industry wage survey was performed in 1985.) We believe it is reasonable to include data on combined hospital and SNF wages in the determination of the guidelines as was done previously because therapy wage levels are primarily determined in occupational labor markets, not industry labor markets. (We also needed to review the SNF therapy data so that we could determine the wage levels in SNFs holding all other factors (including local labor market conditions and working conditions) constant.

For the above reasons we determined that we would not use the BLS survey as the sole source of data for determining the guidelines. We, therefore, decided to seek other survey data sources of hospital and SNF industry specific occupational wage information. Regulations at 42 CFR 413.106(b)(6) provide that the guidelines may be derived from other statistically valid survey data, in lieu of HCFA guidelines, provided that the study designs, questionnaires, and instructions, as well as the resultant survey data, are submitted to and approved in advance by HCFA. Beginning in 1994, we solicited the therapy industry for such statistically valid survey data. The therapy industry had long held that nursing home wages for therapists were higher than hospital wages for therapists because it was more difficult to hire and retain therapists in nursing homes. However, other individuals with experience in the therapy industry have indicated that some therapists prefer working in nursing homes for the following reasons: Preference for working with elderly; location of SNF closer to home; more opportunities for physical therapy work in SNF; and working flexible hours. The therapy industry initially provided us data in 1995, but after our analysis we found the data to be inadequate for use at the regional or national level for several reasons: The sample was not representative; the data were not documented or audited; and primarily large firms paid under contract to the SNF were surveyed.

In March 1996, the National Association for the Support of Long Term Care (NASL), representing portions of the therapy industry, submitted an October 1995 sample survey of salaried therapists in hospitals and nursing homes to HCFA, as allowed under our regulations. This survey did not meet the requirements of the regulations at § 413.106(b)(6), since the survey design, questionnaires, and instructions were not approved by HCFA prior to the start of the survey. Nevertheless, the survey did provide data that were current in SNFs and hospitals. We, therefore, conducted a special analysis of this NASL survey data, including a limited audit of the survey records. Based on this analysis and limited audit, we determined that the survey was not adequate as a sole or primary source of data in determining the guidelines, but could be useful in combination with other data sources. There were several reasons for this determination:

- The data were not audited or certified by an independent party. We were permitted to conduct an audit of the survey records only under stringent restrictions designed to protect the confidentiality of the survey respondents. Those restrictions made it impossible for us to verify the survey results. For example, we were unable to compare submitted survey data with data from other sources.
- The verification survey, conducted to determine the reliability of data submitted by mail, did not appear to be adequate. Only five providers were included in the verification survey. Specifically, we were not satisfied that the verification sample was either sufficiently large or adequately representative.
- The survey is not sufficiently representative. There were variable response rates for hospitals and SNFs. The response rate for hospitals was 10.8 percent and the response rate for SNFs was 29.9 percent. In addition, the sample seemed to include an overrepresentation of large hospitals and chain-affiliated SNFs.

Because there is an underrepresentation of small hospitals and non-chain SNFs in the NASL survey, we cannot be assured with this small response rate that the large hospitals and chain-affiliated SNFs will adequately represent the small hospitals and non-chain SNFs not included in the survey. (The GAO stated in its report, ''Medicare Early Resolution of Overcharges for Therapy in Nursing Homes is Unlikely'', August 16, 1996, p. 7, regarding the NASL survey data, ''However, the survey response rate was low (10 percent for hospitals and 30 percent for SNFs), which raises questions about how representative the data are.'' In a footnote on that page, GAO points out, ''Official government surveys generate a much higher response rate. The BLS White Collar Pay Survey (one component of which was the hospital salary data survey on which the draft guidelines were based) had an overall response rate of 82 percent. Typically, BLS response rates exceed 80 percent).''

- Despite requests for the raw unedited data file, the file was not provided to us.
- We have questions about the validity of certain edits.
- We were also concerned that supervisory time and compensation in lieu of benefits were not consistently reported. Additionally, we were concerned that the supervisory time included in the NASL survey was above a certain threshold that we use in developing the guidelines.

As we analyzed the NASL survey data, which as discussed above, was submitted for the purpose of being used to develop the guideline amounts, we also studied several other surveys of hospitals and nursing homes, each of which are more recent than the BLS surveys, although none was specifically submitted to be used in developing the guidelines.

We analyzed five additional data sources for hospital wage rates and two for freestanding SNF wage rates. The additional hospital data sources examined were: the University of Texas National Hospital Survey (1994 National Survey of Hospital and Medical School Salaries, University of Texas Medical Branch, Galveston, TX, 1994, pp. 15–19); the American Rehabilitation Association (ARA) Surveys of Freestanding Hospitals and of Rehabilitation Units (1995 Salary Survey, American Rehabilitation Association, pp. 53–59 and 94–101); the Maryland Health Services Cost Review Commission's census of hospitals; the American Health Care Association's (AHCA) report that includes hospital data profile (1994 AHCA Survey, Sec. 1, p. 10, Buck Associates); and the NASL 1995 survey of hospitals. For SNFs, we analyzed data from the 1995 NASL survey of SNFs, the January 1995 AHCA survey of SNFs (1995 AHCA Survey, Sec. 3, p. 3, Buck Associates), and the 1996 survey of SNFs by Mutual of Omaha, a Medicare intermediary. Several of these data sources had regional wage levels. We drew the following conclusions about the merits of these data sources for our purposes in determining appropriate therapy salary guidelines (that is, not in relation to the original purposes of the surveys):

- The University of Texas National Hospital Survey data are from October 1994. This annual voluntary hospital survey was conducted for many years for hospitals in various regions of the country to use to benchmark regional wage levels for specific health professional occupations. While there are data from all regions of the United States, the survey was not designed to be representative or statistically valid at the regional level. It appears to give fairly reasonable levels at the national level.
- The American Health Care Association's report includes data on both hospitals and SNFs. The SNF data for January 1995 are both current and industry-specific. The data for SNFs, however, are unevenly edited and appear to include some supervisors and additional salary in lieu of benefits. The sample is heavily weighted by large chains that are members of the Association. The SNF data appear as both employee-weighted and facility-

weighted averages, and do not permit computation of accurate median and 75th percentile levels.

- The Maryland Health Services Cost Review Commission conducts a census of all Maryland hospitals yearly. We analyzed data from the 1995 census. While this is a complete census covering over 50 hospitals, it is for Maryland only. In addition, speech-language pathologists are not included as a separate occupational category.
- The American Rehabilitation Association's survey of its members and prospective members collected July 1994 data. The response rate was low, and the Association indicated in its report that these data cannot be presumed to represent the full population of rehabilitation facilities. No information on SNFs was reported due to an inadequate sample. This survey appears to give reasonable wage levels at the national level when compared to other data sources.
- Mutual of Omaha conducted a 1995 survey of 2,000 SNF Medicare providers that it services. The data are current and industry-specific, but include only information on occupational therapists and speech language pathologists. The survey was national in scope. Although the survey's response rate was very high, only a small percentage of records contained information on wage rates for full-time employed therapists.

Our conclusion from this analysis was that none of the available data sources met the statistical validity criteria recommended in the Senate Committee on Finance Report and specified in the regulations sufficiently well to serve as the sole or even primary source of data for establishing the guidelines. Based on this examination, we determined that a different approach was necessary. As we examined all these potential data sources, we found that mean wage levels at the national level for the most part clustered when adjustments were made for definitional differences. This observation suggested to us that, while no one of the data sources was adequate as a sole or primary source of data for establishing the guidelines, employing all these sources together could provide a useful and valid basis for the guidelines to be used by intermediaries determining the maximum allowable cost of therapy services furnished under arrangements. Therefore, we concluded that we could blend data from the several sources to develop a national ''best estimate'' of prevailing salary levels as the basis for the guidelines. Under this approach, we give weight to each data source, but preferential status to none. None of the data sources or the average of all of the sources could provide regional variations. A new method would have to be used for regional variations.

In an occupational market, wage levels across settings for the same occupation should bear rational relationships in competitive labor markets when adjustments are made for compensating differentials for fringe benefits, working conditions, risk of injury, and geographic areas. This implies that therapists working in hospital and SNF settings can migrate between practice settings with relatively little difficulty. Because of the ease of mobility, labor market forces that affect one therapist practice setting also influence other practice settings. This is not to say that therapists' practice activities in all settings are exactly the same. In setting the guideline amounts, we acknowledged that, because of the ease of mobility of licensed therapy workers across settings, a salary equivalency rate that is too high could put upward pressure on the wages paid to therapists in the larger hospital sector. Similarly, a rate that is too low could make it difficult for providers subject to the guidelines to attract therapists from the hospital setting.

We have decided, for the reasons discussed, not to use the NASL industry survey as the sole or primary data source for setting the guidelines. However, we do believe that it has sufficient strength to include its data along with data from the other sources in a blend as the basis for the salary equivalency guidelines. We have used a blend of hospital and SNF therapist wages in the past to reflect occupational markets and the associated mobility between the two settings. We had considered at one point including a differential between therapist wages in hospitals and nursing homes in the guideline amounts. We reconsidered when we looked across all of the other data sources which included all provider types. We noted clustering of wage levels across provider types that made such a differential inappropriate for occupational labor markets when adjustments are made for locality. We believe that proposing to use the 75th percentile of blended hospital and SNF wage data (weighted by relative employment levels in hospitals and SNFs) to measure the occupational market for therapy services is equitable. Our new approach in which all appropriate data sources were used but adjusted for the mix of SNF and hospital therapy employees will, therefore, provide a buffer for costs that SNFs and other providers may incur in furnishing therapy services to Medicare beneficiaries. We invite comments on this methodology, which is described in more detail in section II.B. of this preamble.

We could not use Medicare cost report information for wage rates because the cost reports for SNFs and other providers do not have hourly wage rates for employees. The cost reports do provide aggregate salaries of employees and costs other than salaries that would include contract labor cost. However, they do not provide the hours worked either by staff or contractors, except for contracted physical and respiratory therapy services for which we have developed salary equivalency guidelines for the services and do require hourly time records.

We did use 1994 Medicare predominantly settled cost report data for prospective payment systems (PPS) hospitals to obtain fringe benefit information. We used Worksheet S–3, Part II from form HCFA–2552. These data are used to adjust the labor portion of hospital payments under the PPS. We believe their use is also appropriate here. We use the 1994 Medicare predominantly settled cost report data, because this is the same data that HCFA used for its wage index update for prospective payment system hospitals for FY 1997. This is the most recent Medicare predominantly settled cost report data that has undergone special scrutiny for the purpose of wage survey data. Moreover, BLS Employment Cost Index information for March 1994 show that fringe benefits in hospitals and SNFs are similar for professional and technical workers.

B. Methodology

In order to determine the hourly salary equivalency amounts, we determined the ''best estimate'' of wages for both hospitals and SNFs. We first found mean wage rates for each of the data sources listed above.

BLS surveyed average hourly earnings (AHE) for all four therapies in 1989. However, their January 1991 survey included the average hourly earnings only for full-time physical and respiratory therapists. (BLS January 1991 average hourly earnings for full-time physical and respiratory therapists were found in the BLS Occupational Wage Survey: Hospitals, January 1991, pp. 36–119. The hospitals in this survey employed 50 or more workers.) We, therefore, needed to estimate 1991 average hourly wages for speech language pathology and occupational therapy. To do so, we started with the BLS 1989 survey of all four therapies as a baseline (BLS Industry Wage Survey: Hospitals, March 1989 (the latest previous survey), pp 33–118). The

hospitals in the 1989 survey employed 100 or more workers. Our analysis of the University of Texas data for U.S. hospitals indicated that the wages for speech language pathology and respiratory therapy increased at a similar rate between 1989 and 1993. Wages for occupational therapy and physical therapy also increased at a similar rate during that period. Therefore, we determined that we could employ the 1989 ratios of speech language pathology to respiratory therapy, and of occupational therapy to physical therapy, in order to estimate 1991 wage levels for speech language pathology and occupational therapy. Specifically, multiplying the ratio of 1989 average hourly occupational therapy wages to 1989 average hourly physical therapy wages by 1991 physical therapy wages yielded estimated 1991 occupational therapy wages. The following formula summarizes the computation (all values are average hourly wages):

[(March 1989 AHE, OT)/(March 1989 AHE, PT)] × (January 1991 AHE, PT)=(estimated January 1991 AHE, OT).

Similarly, multiplying the ratio of 1989 average hourly speech language pathology wages to 1989 average hourly respiratory therapy wages by the 1991 average hourly respiratory therapy wages yielded estimated 1991 average hourly speech language pathology wages. Again, the following formula summarizes the computation (all values are average hourly wages):

[(March 1989 AHE, SLP)/(March 1989 AHE, RT)] × (January 1991 AHE, RT)=estimated January 1991 AHE, SLP.

The American Health Care Association data provided facility-weighted mean wage rates for SNFs. The Association has estimated that 5 percent of the SNF wage rates represented supervisors and additional wages paid in lieu of fringe benefits. We used that estimate to reduce the Association survey wage data to a nonsupervisory, no additional salary in lieu of benefits basis.

We converted annual data in the American Rehabilitation Association and University of Texas surveys to hourly wages using a divisor of 2080 hours, which represents a standard work year.

The Maryland Health Services Cost Review Commission census data provided wage data, paid hours, and numbers of personnel for each hospital. We eliminated data for employees who worked less than 35 hours or more than 40 hours a week to restrict the computation to full-time employees only. We then determined the average hourly wage for each hospital by dividing aggregate wages by the number of paid hours. Finally, we computed the average hourly wages across all hospitals, weighted by the number of employees in each hospital.

NASL data were first divided by 52 to arrive at weekly salary, then divided by the number of hours worked per week which were also given in the survey, to obtain hourly wage rates. As in the case of the Maryland census data, we eliminated data for employees who worked less than 35 hours, or more than 40 hours, a week to restrict the computation to full-time employees only.

We trended all data forward to the fourth quarter of 1995, the base period for the NASL survey. For data from the University of Texas, the American Rehabilitation Association, the American Health Care Association, and the Maryland Commission census (all sources with 1994 or 1995 bases), we trended these data using average hourly earnings for hospital workers published in the BLS Current Employment Statistics' Survey, Standard Industrial Code 806 (Hospitals). To update the BLS survey data from 1991, we derived rates of increase for the period from January 1991 through January 1994 (the period which predates the other data sources, which were surveyed in 1994–1996) based 50 percent on American Hospital Association Panel wage data and 50 percent on the average hourly earnings for hospital workers published in the BLS Current Employment Statistics Survey, Standard Industrial Code 806 (Hospitals).

For the period from January 1994 through October 1995, we used only the BLS Current Employment Statistics Survey as the basis for the rate of increase in the BLS survey data (as we did for the other data sources, which date from that period). The American Hospital Association data had a higher rate of increase during the 1991–1993 period than the BLS data, resulting in cumulating 1995 therapist wage levels that reflect current market conditions in 1995.

After all data were trended to fourth quarter 1995, we determined the salary equivalency guideline amounts for April 1997 in five steps. Those five steps were: (1) Determine average wages by therapy type, separately for hospitals and nursing homes; (2) blend the hospital and nursing home average wages by therapy type, to yield average wages by therapy type for the four occupational markets; (3) approximate the 75th percentile of wages by therapy type; (4) calculate salary equivalency guideline levels for fourth quarter 1995, by adding amounts for fringe benefits, rent, etc.; and (5) update these guideline amounts to April 1997, the proposed effective date.

In the first step, we determined the mean wage levels, by therapy type, for hospitals in each of the available data sources. (Data sources used for hospitals were: BLS, Industry Wage Survey: Hospitals, March 1989 and Occupational Wage Survey: Hospitals, January 199l; University of Texas National Hospital Survey 1994 National Survey of Hospital and Medical School Salaries; American Rehabilitation Association's surveys of freestanding hospitals and of rehabilitation units, 1995 Salary Survey; Maryland Health Services Cost Review Commission's census of hospitals; American Health Care Association hospital report's data profile, 1994 AHCA Survey; and NASL 1995 survey of hospitals.) We similarly determined the mean wage levels, by therapy type, for nursing homes in each of the available data sources. (Data sources used for SNFs were: 1995 NASL survey of SNFs; American Health Care Association survey of SNFs, 1995 AHCA Survey; and the 1996 survey of SNFs by Mutual of Omaha.) We then averaged the mean wage levels from the available data sources by therapy type, separately for hospitals and nursing homes.

In the second step, we blended the hospital and nursing home average wage levels by therapy, to yield average wage levels by therapist type across the four occupational markets. We employed a blending process used in the previous salary equivalency guidelines notice (48 FR 44922, September 30, 1983), to weight the occupational averages by relative employment levels in hospitals and nursing homes, respectively. To establish appropriate weights, we used employment of therapists in nursing homes (SIC 805) and in hospitals (SIC 806), as found in the BLS Occupational Employment Statistics Survey. (The most recent available survey of employment in nursing homes is for 1993, while the most recent survey data of employment in hospitals is for 1995.) We applied these weights to the mean hospital and SNF wage rates by the four therapist types, as determined in the first step. The BLS Occupational Employment Statistics Survey shows that the hospital industry is a major employer of therapists of all types, while SNFs employ fewer salaried therapists. The weights for hospitals and nursing homes, respectively, are: For physical therapy, 85 percent and 15 percent; for occupational therapy, 85 percent and 15 percent; for speech language pathology, 82 percent and 18

percent; and for respiratory therapy, 99 percent and 1 percent.

In the third step we approximated the 75th percentile of the blended wage rates for each therapy occupation. It was necessary to approximate the 75th percentile because, unlike our previous computations of the guidelines, in this proposal we could not determine percentile values directly from each of the sources. We have observed in the BLS data and a regression analysis we performed on NASL data that the 75th percentile was approximately 110 percent of the mean. We, therefore, increased each of the four blended wage averages by 10 percent to approximate the 75th percentile of wages in each discipline across the occupational market.

Salary equivalency guidelines are based on the therapists' time in the facility. Adjustments to average hourly earnings data were necessary to include a reasonable allowance for vacation, sick leave, and administrative time. In order to convert the average hourly earnings from an hours paid basis to an hours worked basis, we applied a factor of 2080/1808 to the average hourly earnings determined thus far, which is the same methodology used in the previous notice. The 1808 figure was computed based on 2080 hours (40 hours/week × 52 weeks; a standard work year) less 15 vacation days, 10 sick leave days and 9 holidays equal to 34 days, or 272 hours. Data on leave benefits come from the BLS Employee Benefits Survey. (U.S. Department of Labor, Bureau of Labor Statistics: Employee Benefits in Small Private Establishments, 1992, Bulletin 2441, U.S. Government Printing Office, May 1994, pp. 10–20.)

In the fourth step we added fringe benefit and expense factors to the prevailing salary rates determined for each therapy type. The fringe benefit and expense factors are intended to recognize fringe benefits that are received by an employee therapist, as well as overhead expenses that a therapist or therapist organization might incur in furnishing services under arrangements. These factors are expressed as percentages of the prevailing hourly rate and are applied to every hour of service furnished at the provider site. Fringe benefits may include vacation and sick pay, insurance premiums, pension payments, allowance for job-related training, meals, severance pay, bonuses, etc.

We computed fringe benefits as a percent of total compensation using fiscal year 1994 Medicare cost reports for hospitals under the prospective payment system. We used the Medicare cost reports for prospective payment system hospitals to obtain fringe benefit information because these data are carefully scrutinized; they are used to adjust the labor portion of hospital payments under the prospective payment system. We believe these data are the best proxy for therapist fringe benefit information, which is not available for SNFs. Also, the BLS Employment Cost Index for March 1994 showed that fringe benefits for professional and technical workers in hospitals and nursing homes were similar. The fringe benefit component is about 14 percent of the total salary equivalency amount.

The expense component takes into account expenses a therapist or therapist organization might have, such as maintaining an office, purchasing insurance, etc. We based the expense component of the guidelines on an estimate of the costs of maintaining a therapy services office. The general methodology for computing the expense component is similar to that used in the 1983 notice (48 FR 44922, September 30, 1983) but the factors have been revised. This component has rental and non-rental portions.

To determine the rental portion of the expense component, we used the 1991 rental income data (updated to fourth quarter 1995 using Consumer Price Index (CPI) rental data) compiled by the Building Owners and Managers Association International (BOMA) and published in the 1992 BOMA Experience Exchange Report for Downtown and Suburban Office Buildings. (Building Owners and Managers Association International: 1992 BOMA Experience Exchange Report, Washington, DC, 1992, p. 27.) BOMA reported a national rent average, excluding utility cost, of $16.87 per square foot per year. We applied an occupancy factor of .971 to take into account the space used for rental building hallways, elevators, etc., that are included in the BOMA rent figure but that are not part of the area rented for an office. We then added the BOMA utilities cost of $1.92 per square foot. We determined total rental cost assuming a rental area of 250 square feet, the same rental area used in prior schedules of guidelines. Total 1991 rental cost was divided by 1808 (the hours factor applied to average hourly earnings) to compute rental cost per hour worked in 1991.

The expense component includes costs of maintaining an office, such as wages and salaries of administrative and clerical help, insurance, telephones, etc. We believe that Medicare should only pay for services at their reasonable cost. We estimated this component, including rent, to be reasonable at 30 percent of total expenses in 1991. We based our 30 percent estimate of total expenses on informal discussion with the rehabilitation industry. We request comments on whether this is a reasonable estimate. This component had previously been lower because it was based on a single person maintaining an office out of a home as opposed to the costs of maintaining a business. The 1991 rent per square foot amount and the other expenses amount were constant across the four therapy types, although the weights of these factors vary by therapy type (the weight for rent is lowest for physical therapy and highest for respiratory therapy).

The dollar amount for 1991 rent per hour was trended to fourth quarter 1995, using the proxy selected for rent, the CPI-U for Housing, published by BLS. The 1991 dollar amounts for the remainder of the other expenses factor were trended to October 1995, using their selected proxies. This was done for each of the four therapy types. The expense factor, including rent, is about 28 percent of the total salary equivalency amount.

Using the 1994 Medicare cost reports allows us to recognize that the relative values of certain factors, such as fringe benefits, have increased more than the relative values of other factors such as rent or wages and salaries. For instance, if the January 1991 values of the proxies for office rent and clerical worker fringe benefits are assumed to be equal to 1.0, then the fourth quarter 1995 values of these two proxies are 1.131 for rent and 1.249 for clerical worker fringe benefits. The values of these proxies have increased by different percentages.

We summed the fourth quarter 1995 dollar values of the ''blended'' wages, fringe benefits, rent, and the remainder of the other expenses factors to obtain salary equivalency guideline amounts for fourth quarter 1995. We updated the resultant fourth quarter 1995 salary equivalency guideline amounts to April 1997, using a DRI/McGraw-Hill 1996:3 forecast. The April 1997 national guidelines below are based on the amounts determined above:

Physical Therapy	$48.78
Occupational Therapy	46.27
Speech Language Pathology	44.51
Respiratory Therapy	38.51

In previous schedules, statewide therapy guideline amounts were calculated from the wage data for 22 Metropolitan Statistical Areas (MSAs) provided by the BLS survey. We averaged prevailing hourly rates for the surveyed MSAs within each State to

determine that State's therapy rate. We also grouped contiguous states into regions and used an average of the surveyed MSA wage rates from the region in order to determine the rate for States with no MSAs in the BLS survey. As we acknowledged in the notice of the last schedule (48 FR 44923), this method has two major shortcomings. First, where BLS conducted more than one survey in a given State, such as New York, providers located in the surveyed MSAs were subject to the State rate even though actual salary data were available for those MSAs. Secondly, direct application of individual MSA prevailing rates (or an average of MSA rates) to establish guidelines is relatively insensitive to geographic variations in wage rates.

Commenters on the existing guidelines have suggested that the guidelines should both account more fully for local cost variation, and more accurately reflect the different therapy service costs in urban and rural regions. In addition, commenters have cautioned us to avoid any methodology which would create unreasonable differences between adjoining geographical regions. In developing these proposed guidelines, we have reconsidered how to account for local cost variations in the light of those comments. Two other long-term care Medicare benefit programs, SNF care and home health care, use the prospective payment system hospital wage index to adjust for local area variations in labor-related costs. We have decided to employ a modified version of the prospective payment system hospital wage index as the best available method for taking local cost variation into account. Specifically, we propose to employ the pre-reclassified hospital wage index in order to establish the therapy guideline amounts for urban areas. (We use the pre-reclassified wage index because reclassifications apply to hospitals under the prospective payment system only.) For the rural areas of each State, we propose to use a weighted average of the wage index values for the urban areas of the State. This modified geographic adjustment index accounts for two salient features of the geographical variation in therapy costs. First, within MSAs there is an association between therapist hourly salary and fringe benefit rates and overall hospital hourly salary and fringe benefit rates, because nursing facilities compete in the same labor market areas as hospitals and other health care providers such as home health agencies. In addition, the therapy market for rural (non-MSA) areas tends to reflect the prevailing compensation conditions of the urban areas in the region.

In order to determine the geographic adjustment for the rural areas, it is first necessary to determine a weighted average of the wage index values for the urban areas. We determined the weighted average of the geographic adjustment index values for the MSAs in each State by the following method. We began with the pre-reclassified hospital wage index, based on the fiscal year 1993 Hospital Cost Report Information System (HCRIS) data set of hospitals under the prospective payment system, for each MSA. (This is the same data used as the basis for the hospital wage index effective for hospitals on October 1, 1996 (that is, fiscal year 1997)). For each MSA, we then obtained the number of total adjusted hours worked in prospective payment system hospitals from the fiscal 1993 HCRIS data set. We applied two edits to this data. We excluded all hospital cost reports that showed adjusted hourly compensation outside of three standard deviations of the mean of the distribution in order to eliminate erroneous reports. We also excluded all cost reports from rural areas. A total of 2,837 hospitals under the prospective payment system satisfied these edits. After obtaining the number of hours worked in each MSA, we added hours from MSAs in each State to determine the total number of hours worked in the State. For MSAs that cover more than one State, we used only the hours from hospitals inside a State boundary for determining the total hours worked in the State. Once we determined the total hours worked in the State, the ratio of hours worked in an MSA to total state hours provided the weight for each MSA. We then multiplied each MSA's pre-reclassified hospital wage index by the weight for the MSA, and added the results to produce the geographic adjustment index for the non-MSA (rural) areas of the State.

Finally, we normalized the index values to the national average so that an area with an average geographic adjustment equal to the national average would have a geographic adjustment index of 1.0. We first computed a national area geographic adjustment index by calculating the ratio of hospital hours worked in each MSA to national hospital hours worked, multiplying this ratio by each MSA's geographic adjustment index, and adding the results. We then divided this national geographic adjustment index into the area geographic adjustment index for each region to produce the normalized therapist geographic adjustment index.

The results of these calculations are shown in Tables I and II. Table I shows the geographic adjustment index values and hourly salary equivalency amounts for each of the 318 MSAs in the 50 States and Puerto Rico. Table II lists geographic adjustment index values and hourly salary equivalency upper limits for the rural (that is, non-MSA) areas of each State and Puerto Rico.

In this proposed rule, we computed the nonurban geographic adjustment index for a State as a weighted-average index, using hospital hours for each MSA in the State as the weights. We are considering computing the nonurban geographic adjustment index by an alternative method. We are soliciting comments on alternative methods for determining the nonurban geographic adjustment index under these guidelines.

C. Specific Number of Schedules

We are proposing one schedule of guidelines for respiratory therapists, in contrast to the three schedules in the notice of September 30, 1983. This decision is based on the fact that HCFA does not differentiate in covering respiratory therapists by different levels. Therefore, to make coverage conform with payment for respiratory therapy services, we are proposing one schedule for respiratory therapists. Information from fiscal intermediaries and the American Association for Respiratory Care indicates that industry practice is to use only one schedule. Also, in the BLS 1989 Hospital Wage Industry Survey, there were four different wage classes and a summary (weighted average) wage level for respiratory therapists. Only class III and the summary level were reported for all 18 MSAs surveyed. For respiratory therapists in 1991, there were two wage classes and a summary wage level shown. Although the summary level occupational definitions were comparable from 1989 to 1991, occupational definitions for basic classes changed between surveys. The summary level was the consistent category—present for all MSAs in both surveys and encompassing all nonsupervisory levels of responsibility for both surveys. We propose to continue to have one schedule of guidelines for physical therapists. Likewise, we propose to establish one schedule of guidelines for speech language pathologists and one for occupational therapists.

The standard travel allowance is 50 percent of the salary equivalency amount. It is longstanding policy that has been used in all of the previous guideline notices. For example, the

proposed standard travel allowance amount for physical therapists in Bangor, Maine would be determined as follows:

Bangor, Maine hourly salary equivalency amount	$46.60
Standard travel allowance	×. 50

Section II.B reflects the proposed changes for computing the salary component and fringe benefit expense factors.

The salary equivalency amount is made up of a salary component and fringe benefit and expense factors, while the travel allowance, which is an additional allowance, reflects payment for the therapist's time spent in traveling to the provider site or to the patient's home. We are proposing changes in the methodology for computing the salary component and fringe benefit and expense factors. Although we are not proposing to change the current methodology with respect to the standard travel allowance in this proposed rule, we are seeking public comment on an optional travel allowance methodology for use when therapy services are furnished in areas in which geographic distance creates unique labor markets as discussed in section II.F.1 of this notice.

The schedules of guidelines that follow (Tables I and II) are based on the projected amounts, while the standard travel allowance is 50 percent of the guideline amount for each therapy type.

D. Tables of Guidelines and Geographic Adjustment Indexes

The salary equivalency guideline amounts for each therapy type are calculated in three steps: (1) Multiplication of the labor-related share (83.379 percent of the composite weight) by the geographic adjustment index and by the national salary equivalency rate for the therapist type; (2) multiplication of the non-labor related share (16.621 percent of the composite weight) by the national salary equivalency rate for the therapist type; and (3) summation of the results from steps 1 and 2. The salary equivalency guideline amounts for each therapy type computed by this method are presented in Tables I and II.

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
0040	Abilene, TX, Taylor, TX	0.8112	41.10	38.99	37.50	32.45
0060	Aguadilla, PR, Aguada, PR, Aguadilla, PR, Moca, PR [1]	0.4271	26.29	24.94	23.99	20.75
0080	Akron, OH, Portage, OH, Summit, OH	0.9931	48.50	46.00	44.25	38.29
0120	Albany, GA, Dougherty, GA, Lee, GA	0.8665	43.35	41.12	39.56	34.22
0160	Albany-Schenectady-Troy, NY, Albany, NY, Montgomery, NY, Rensselaer, NY, Saratoga, NY, Schenectady, NY, Schoharie, NY	0.8692	43.46	41.22	39.66	34.31
0200	Albuquerque, NM, Bernalillo, NM, Sandoval, NM, Valencia, NM	0.9418	46.41	44.02	42.35	36.64
0220	Alexandria, LA, Rapides, LA	0.8183	41.39	39.26	37.77	32.68
0240	Allentown-Bethlehem-Easton, PA, Carbon, PA, Lehigh, PA, Northampton, PA	1.0071	49.07	46.54	44.77	38.74
0280	Altoona, PA, Blair, PA	0.9585	47.09	44.67	42.97	37.18
0320	Amarillo, TX, Potter, TX, Randall, TX	0.8799	43.90	41.64	40.05	34.65
0380	Anchorage, AK, Anchorage, AK [1]	1.3329	64.35	61.04	58.71	50.80
0440	Ann Arbor, MI, Lenawee, MI, Livingston, MI, Washtenaw, MI	1.1754	55.91	53.04	51.02	44.14
0450	Anniston, AL, Calhoun, AL	0.8087	41.00	38.89	37.41	32.37
0460	Appleton-Oshkosh-Neenah, WI, Calumet, WI, Outagamie, WI, Winnebago, WI	0.8960	44.55	42.26	40.65	35.17
0470	Arecibo, PR, Arecibo, PR, Camuy, PR, Hatillo, PR [1]	0.4432	26.94	25.56	24.59	21.27
0480	Asheville, NC, Buncombe, NC, Madison, NC	0.9408	46.37	43.99	42.31	36.61
0500	Athens, GA, Clarke, GA, Madison, GA, Oconee, GA	0.9482	46.67	44.27	42.59	36.85
0520	Atlanta, GA, Barrow, GA, Bartow, GA, Carroll, GA, Cherokee, GA, Clayton, GA, Cobb, GA, Coweta, GA, DeKalb, GA, Douglas, GA, Fayette, GA, Forsyth, GA, Fulton, GA, Gwinnett, GA, Henry, GA, Newton, GA, Paulding, GA, Pickens, GA, Rockdale, GA, Spalding, GA, Walton, GA*	1.0112	49.24	46.70	44.93	38.87
0560	Atlantic City-Cape May, NJ, Atlantic City, NJ, Cape May, NJ	1.1165	53.52	50.76	48.83	42.25
0600	Augusta-Aiken, GA-SC, Columbia, GA, McDuffie, GA, Richmond, GA, Aiken, SC, Edgefield, SC	0.8906	44.33	42.05	40.45	35.00
0640	Austin-San Marcos, TX, Bastrop, TX, Caldwell, TX, Hays, TX, Travis, TX, Williamson, TX	0.9327	46.04	43.67	42.01	36.35
0680	Bakersfield, CA, Kern, CA	1.0270	49.88	47.31	45.51	39.38
0720	*Baltimore, MD, Anne Arundel, MD, Baltimore, MD, Baltimore City, MD, Carroll, MD, Harford, MD, Howard, MD, Queen Annes, MD	0.9876	48.28	45.79	44.05	38.11
0733	Bangor, ME, Penobscot, ME	0.9465	46.60	44.21	42.52	36.79
0743	Barnstable-Yarmouth, MA, Barnstable, MA	1.3759	64.07	60.77	58.46	50.58
0760	Baton Rouge, LA, Ascension, LA, East Baton Rouge, LA, Livingston, LA, West Baton Rouge, LA	0.85	42.68	40.48	38.94	33.69
0840	Beaumont-Port Arthur, TX, Hardin, TX, Jefferson, TX, Orange, TX	0.8644	43.26	41.04	39.48	34.16
0860	Bellingham, WA, Whatcom, WA	1.1407	54.50	51.70	49.73	43.03
0870	Benton Harbor, MI, Berrien, MI	0.8573	42.98	40.76	39.21	33.93

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
0875	Bergen-Passaic, NJ, Bergen, NJ, Passaic, NJ*	1.1878	56.42	53.52	51.48	44.54
0880	Billings, MT, Yellowstone, MT	0.9158	45.36	43.02	41.39	35.81
0920	Biloxi-Gulfport-Pascagoula, MS, Hancock, MS, Harrison, MS, Jackson, MS	0.8622	43.18	40.95	39.40	34.09
0960	Binghamton, NY, Broome, NY, Tioga, NY	0.8892	44.27	42.00	40.40	34.94
1000	Birmingham, AL, Blount, AL, Jefferson, AL, St. Clair, AL, Shelby, AL	0.9108	45.15	42.83	41.20	35.65
1010	Bismarck, ND, Burleigh, ND, Morton, ND	0.7986	40.59	38.50	37.04	32.04
1020	Bloomington, IN, Monroe, IN	0.8720	43.57	41.33	39.76	34.40
1040	Bloomington-Normal, IL, McLean, IL	0.9061	44.96	42.65	41.03	35.49
1080	Boise City, ID, Ada, ID, Canyon, ID	0.9457	46.57	44.18	42.49	36.77
1123	Boston-Brockton-Nashua-MA-NH, Bristol, MA, Essex, MA, Middlesex, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA, Worcester, MA, Hillsborough, NH, Merrimack, NH, Rockingham, NH, Strafford, NH*	1.1705	55.71	52.85	50.84	43.98
1125	Boulder-Longmont, CO, Boulder, CO	0.9597	47.14	44.72	43.01	37.22
1145	Brazoria, TX, Brazoria, TX	0.9274	45.83	43.47	41.82	36.18
1150	Bremerton, WA, Kitsap, WA	1.0987	52.79	50.08	48.17	41.68
1240	Brownsville-Harlingen-San Benito, TX, Cameron, TX	0.8610	43.13	40.91	39.35	34.05
1260	Bryan-College Station,TX, Brazos, TX	0.8921	44.39	42.11	40.51	35.05
1280	Buffalo-Niagara Falls, NY, Erie, NY, Niagara, NY*	0.9179	45.44	43.10	41.46	35.87
1303	Burlington, VT, Chittenden, VT, Franklin, VT, Grand Isle, VT	1.0148	49.38	46.84	45.06	38.99
1310	Caguas, PR, Caguas, PR, Cayey, PR, Cidra, PR, Gurabo, PR, San Lorenzo, PR [1]	0.4609	27.66	26.24	25.24	21.84
1320	Canton-Massillon, OH, Carroll, OH, Stark, OH	0.8716	43.56	41.32	39.74	34.39
1350	Casper, WY, Natrona, WY	0.8891	44.27	41.99	40.39	34.95
1360	Cedar Rapids, IA, Linn, IA	0.8525	42.78	40.58	39.04	33.77
1400	Champaign-Urbana, IL, Champaign, IL	0.9465	46.60	44.21	42.52	36.76
1440	Charleston-North Charleston, SC, Berkeley, SC, Charleston, SC, Dorchester, SC	0.9034	44.85	42.54	40.93	35.41
1480	Charleston, WV, Kanawha, WV, Putnam, WV	0.9601	47.16	44.73	43.03	37.23
1520	Charlotte-Gastonia-Rock Hill, NC–SC, Cabarrus, NC, Gaston, NC, Lincoln, NC, Mecklenburg, NC, Rowan, NC, Union, NC, York, SC*	0.9696	47.54	45.10	43.38	37.53
1540	Charlottesville, VA, Albemarle, VA, Charlottesville City, VA, Fluvanna, VA, Greene, VA	0.9227	45.64	43.29	41.64	36.03
1560	Chattanooga, TN-GA, Catoosa, GA, Dade, GA, Walker, GA, Hamilton, TN, Marion, TN	0.8917	44.38	42.09	40.49	35.03
1580	Cheyenne, WY, Laramie, WY	0.7739	39.58	37.55	36.12	31.25
1600	Chicago, IL, Cook, IL, DeKalb, IL, DuPage, IL, Grundy, IL, Kane, IL, Kendall, IL, Lake, IL, McHenry, IL, Will, IL*	1.0845	52.22	49.53	47.65	41.22
1620	Chico-Paradise, CA, Butte, CA	1.0499	50.81	48.20	46.36	40.11
1640	Cincinnati, OH–KY–IN, Dearborn, IN, Ohio, IN, Boone, KY, Campbell, KY, Gallatin, KY, Grant, KY, Kenton, KY, Pendleton, KY, Brown, OH, Clermont, OH, Hamilton, OH, Warren, OH*	0.9644	47.33	44.90	43.19	37.37
1660	Clarksville-Hopkinsville, TN–KY, Christian, KY, Montgomery, TN	0.7777	39.74	37.69	36.26	31.37
1680	Cleveland-Lorain-Elyria, OH, Ashtabula, OH, Cuyahoga, OH, Geauga, OH, Lake, OH, Lorain, OH, Medina, OH*	0.9964	48.63	46.13	44.38	38.39
1720	Colorado Springs, CO, El Paso, CO	0.9415	46.40	44.01	42.34	36.63
1740	Columbia, MO, Boone, MO	0.8969	44.59	42.29	40.68	35.20
1760	Columbia, SC, Lexington, SC, Richland, SC	0.9233	45.66	43.31	41.66	36.05
1800	Columbus, GA-AL Russell, AL, Chattanoochee, GA, Harris, GA, Muscogee, GA	0.7841	40.00	37.94	36.50	31.58
1840	Columbus, OH, Delaware, OH, Fairfield, OH, Franklin, OH, Licking, OH, Madison, OH, Pickaway, OH*	0.9758	47.80	45.34	43.61	37.73
1880	Corpus Christi, TX, Nueces, TX, San Patricio, TX	0.8951	44.51	42.22	40.62	35.14
1900	Cumberland, MD–WV, Allegany, MD, Mineral, WV	0.8740	43.66	41.41	39.83	34.46
1920	Dallas, TX, Collin, TX, Dallas, TX, Denton, TX, Ellis, TX, Henderson, TX, Hunt, TX, Kaufman, TX, Rockwall, TX*	0.9806	47.99	45.52	43.79	37.89
1950	Danville, VA, Danville City, VA, Pittsylvania, VA	0.8564	42.94	40.73	39.18	33.90
1960	Davenport-Rock Island-Moline, IA-IL, Scott, IA, Henry, IL, Rock Island, IL	0.8454	42.49	40.31	38.77	33.55

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
2000	Dayton-Springfield, OH, Clark, OH, Greene, OH, Miami, OH, Montgomery, OH	0.9635	47.30	44.86	43.16	37.34
2020	Daytona Beach, FL, Flagler, FL, Volusia, FL	0.8941	44.47	42.18	40.58	35.11
2030	Decatur, AL, Lawrence, AL, Morgan, AL	0.8450	42.48	40.29	38.76	33.53
2040	Decatur, IL, Macon, IL	0.7910	40.28	38.21	36.75	31.80
2080	Denver, CO, Adams, CO, Arapahoe, CO, Denver, CO, Douglas, CO, Jefferson, CO*	1.0246	49.78	47.22	45.42	39.30
2120	Des Moines, IA, Dallas, IA, Polk, IA, Warren, IA	0.8885	44.25	41.97	40.37	34.93
2160	Detroit, MI, Lapeer, MI, Macomb, MI, Monroe, MI, Oakland, MI, St. Clair, MI, Wayne, MI*	1.0809	52.07	49.36	47.51	41.11
2180	Dothan, AL, Dale, AL, Houston, AL	0.7801	39.84	37.79	36.35	31.45
2190	Dover, DE, Kent, DE	0.9068	44.99	42.67	41.05	35.5
2200	Dubuque, IA, Dubuque, IA	0.8176	41.36	39.23	37.74	32.65
2240	Duluth-Superior, MN–WI, St. Louis, MN, Douglas, WI	0.9491	46.71	44.31	42.62	36.88
2281	Dutchess County, NY, Dutchess, NY	1.0673	51.52	48.87	47.01	40.67
2290	Eau Claire, WI, Chippewa, WI, Eau Claire, WI	0.8747	43.68	41.44	39.86	34.49
2320	El Paso, TX, El Paso, TX	0.9539	46.91	44.49	42.80	37.03
2330	Elkhart-Goshen, IN, Elkhart, IN	0.8871	44.19	41.91	40.32	34.88
2335	Elmira, NY, Chemung, NY	0.8484	42.61	40.42	38.88	33.64
2340	Enid, OK, Garfield, OK	0.7924	40.34	38.26	36.81	31.84
2360	Erie, PA, Erie, PA	0.9232	45.66	43.31	41.66	36.04
2400	Eugene-Springfield, OR, Lane, OR	1.1360	54.31	51.52	49.56	42.88
2440	Evansville-Henderson, IN–KY, Posey, IN, Vanderburgh, IN, Warrick, IN, Henderson, KY	0.9054	44.93	42.62	41.00	35.47
2520	Fargo-Moorhead, ND–MN, Clay, MN, Cass, ND	0.9117	45.19	42.86	41.23	35.67
2560	Fayetteville, NC, Cumberland, NC	0.9078	45.03	42.71	41.09	35.55
2580	Fayetteville-Springdale-Rogers, AR, Benton, AR, Washington, AR	0.7277	37.70	35.76	34.40	29.77
2620	Flagstaff, AZ–UT, Coconino, AZ, Kane, UT	0.9090	45.08	42.76	41.13	35.59
2640	Flint, MI, Genesee, MI	1.1337	54.22	51.43	49.47	42.80
2650	Florence, AL, Colbert, AL, Lauderdale, AL	0.8001	40.65	38.56	37.09	32.09
2655	Florence, SC, Florence, SC	0.8662	43.34	41.11	39.54	34.21
2670	Fort Collins-Loveland, CO, Larimer, CO	1.0646	51.41	48.76	46.91	40.58
2680	Ft. Lauderdale, FL, Broward, FL*	1.0632	51.35	48.71	46.86	40.54
2700	Fort Myers-Cape Coral, FL, Lee, FL	0.9104	45.14	42.81	41.18	35.63
2710	Fort Pierce-Port St. Lucie, FL, Martin, FL, St. Lucie, FL	1.0250	49.80	47.23	45.44	39.31
2720	Fort Smith, AR–OK, Crawford, AR, Sebastian, AR, Sequoyah, OK	0.7926	40.34	38.27	36.81	31.85
2750	Fort Walton Beach, FL, Okaloosa, FL	0.9265	45.79	43.43	41.78	36.15
2760	Fort Wayne, IN, Adams, IN, Allen, IN, DeKalb, IN, Huntington, IN, Wells, IN, Whitley, IN	0.8870	44.18	41.91	40.32	34.88
2800	Forth Worth-Arlington, TX Hood, TX, Johnson, TX, Parker, TX, Tarrant, TX*	1.0233	49.73	47.17	45.37	39.26
2840	Fresno, CA, Fresno, CA, Madera, CA	1.1265	53.93	51.15	49.20	42.57
2880	Gadsden, AL, Etowah, AL	0.8951	44.51	42.22	40.62	35.14
2900	Gainesville, FL, Alachua, FL	0.9509	46.78	44.38	42.69	36.93
2920	Galveston-Texas City, TX, Galveston, TX	1.1084	53.19	50.45	48.53	41.99
2960	Gary, IN Lake, IN, Porter, IN	0.9717	47.63	45.18	43.46	37.60
2975	Glens Falls, NY, Warren, NY, Washington, NY	0.8630	43.21	40.98	39.43	34.11
2980	Goldsboro, NC, Wayne, NC	0.8459	42.51	40.32	38.79	33.56
2985	Grand Forks, ND–MN, Polk, MN, Grand Forks, ND	0.9082	45.05	42.73	41.10	35.56
2995	Grand Junction, CO, Mesa, CO	0.8402	42.28	40.11	38.58	33.38
3000	Grand Rapids-Muskegon-Holland, MI, Allegan, MI, Kent, MI, Muskegon, MI, Ottawa, MI	1.0199	49.59	47.04	45.25	39.15
3040	Great Falls, MT, Cascade, MT	0.8750	43.70	41.45	39.87	34.50
3060	Greeley, CO, Weld, CO	0.9767	47.83	45.37	43.65	37.76
3080	Green Bay, WI, Brown, WI	0.9110	45.16	42.84	41.21	35.65
3120	Greensboro-Winston-Salem-High Point, NC, Alamance, NC, Davidson, NC, Davie, NC, Forsyth, NC, Guilford, NC, Randolph, NC, Stokes, NC, Yadkin, NC*	0.9388	46.29	43.91	42.24	36.54
3150	Greenville, NC, Pitt, NC	0.9150	45.32	42.99	41.36	35.78
3160	Greenville-Spartanburg-Anderson, SC, Anderson, SC, Cherokee, SC, Greenville, SC, Pickens, SC, Spartanburg, SC	0.8998	44.70	42.40	40.79	35.29
3180	Hagerstown, MD, Washington, MD	0.9248	45.72	43.37	41.72	36.10
3200	Hamilton-Middletown, OH, Butler, OH	0.9565	47.01	44.59	42.90	37.11
3240	Harrisburg-Lebanon-Carlisle, PA, Cumberland, PA, Dauphin, PA, Lebanon, PA, Perry, PA	1.0238	49.75	47.19	45.39	39.27

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
3283	Hartford, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, Tolland, CT*	1.2465	58.81	55.78	53.66	46.42
3285	Hattiesburg, MS, Forrest, MS, Lamar, MS	0.7309	37.84	35.89	34.52	29.87
3290	Hickory-Morganton-Lenoir, NC, Alexander, NC, Burke, NC, Caldwell, NC, Catawba, NC	0.8694	43.47	41.23	39.66	34.32
3320	Honolulu, HI, Honolulu, HI [1]	1.1552	56.92	53.99	51.93	44.93
3350	Houma, LA, Lafourche, LA, Terrebonne, LA	0.7915	40.30	38.23	36.77	31.82
3360	Houston, TX, Chambers, TX, Fort Bend, TX, Harris, TX, Liberty, TX, Montgomery, TX, Waller, TX*	1.0079	49.10	46.57	44.80	38.76
3400	Huntington-Ashland, WV–KY–OH, Boyd, KY, Carter, KY, Greenup, KY, Lawrence, OH, Cabell, WV, Wayne, WV	0.9247	45.72	43.37	41.72	36.09
3440	Huntsville, AL, Limestone, AL, Madison, AL	0.8271	41.75	39.60	38.09	32.96
3480	Indianapolis, IN, Boone, IN, Hamilton, IN, Hancock, IN, Hendricks, IN, Johnson, IN, Madison, IN, Marion, IN, Morgan, IN, Shelby, IN*	0.9981	48.70	46.20	44.44	38.45
3500	Iowa City, IA, Johnson, IA	0.9435	46.48	44.09	42.41	36.70
3520	Jackson, MI, Jackson, MI	0.9117	45.19	42.86	41.23	35.67
3560	Jackson, MS, Hinds, MS, Madison, MS, Rankin, MS	0.7946	40.43	38.35	36.89	31.91
3580	Jackson, TN, Madison, TN	0.8354	42.09	39.92	38.40	33.33
3600	Jacksonville, FL, Clay, FL, Duval, FL, Nassau, FL, St. Johns, FL	0.9158	45.36	43.02	41.39	35.81
3605	Jacksonville, NC, Onslow, NC	0.7111	37.03	35.12	33.79	29.23
3610	Jamestown, NY, Chautaqua, NY	0.7731	39.55	37.52	36.09	31.22
3620	Janesville-Beloit, WI, Rock, WI	0.8713	43.55	41.30	39.73	34.38
3640	Jersey City, NJ, Hudson, NJ	1.1472	54.77	51.95	49.97	43.24
3660	Johnson City-Kingsport-Bristol, TN–VA, Carter, TN, Hawkins, TN, Sullivan, TN, Unicoi, TN, Washington, TN, Bristol City, VA, Scott, VA, Washington, VA	0.8954	44.53	42.23	40.63	35.15
3680	Johnstown, PA, Cambria, PA, Somerset, PA	0.8464	42.53	40.34	38.81	33.58
3700	Jonesboro, AR	0.7277	37.70	35.76	34.40	29.77
3710	Joplin, MO, Jasper, MO, Newton, MO	0.7698	39.42	37.39	35.97	31.12
3720	Kalamazoo-Battlecreek, MI, Calhoun, MI, Kalamazoo, MI, Van Buren, MI	1.0625	51.32	48.68	46.83	40.52
3740	Kankakee, IL, Kankakee, IL	0.9187	45.47	43.13	41.49	35.90
3760	Kansas City, KS–MO, Johnson, KS, Leavenworth, KS, Miami, KS, Wyandotte, KS, Cass, MO, Clay, MO, Clinton, MO, Jackson, MO, Lafayette, MO, Platte, MO, Ray, MO*	0.9553	46.96	44.55	42.85	37.07
3800	Kenosha, WI, Kenosha, WI	0.9217	45.60	43.25	41.60	36.00
3810	Killeen-Temple, TX, Bell, TX, Coryell, TX	1.0474	50.71	48.10	46.27	40.03
3840	Knoxville, TN, Anderson, TN, Blount, TN, Knox, TN, Loudon, TN, Sevier, TN, Union, TN	0.8569	42.96	40.75	39.20	33.92
3850	Kokomo, IN, Howard, IN, Tipton, IN	0.8658	43.32	41.09	39.53	34.20
3870	La Crosse, WI–MN, Houston, MN, La Crosse, WI	0.8686	43.44	41.20	39.63	34.29
3880	Lafayette, LA, Acadia, LA, Lafayette, LA, St. Landry, LA, St. Martin, LA	0.8228	41.57	39.43	37.93	32.82
3920	Lafayette, IN, Clinton, IN, Tippecanoe, IN	0.8851	44.11	41.84	40.25	34.82
3960	Lake Charles, LA, Calcasieu, LA	0.8098	41.04	38.93	37.45	32.40
3980	Lakeland-Winter Haven, FL, Polk, FL	0.8843	44.07	41.81	40.22	34.80
4000	Lancaster, PA, Lancaster, PA	0.9659	47.39	44.95	43.24	37.42
4040	Lansing-East Lansing, MI, Clinton, MI, Eaton, MI, Ingham, MI	1.0089	49.14	46.61	44.84	38.80
4080	Laredo, TX, Webb, TX	0.7129	37.10	35.19	33.86	29.29
4100	Las Cruces, NM, Dona Ana, NM	0.8564	42.94	40.73	39.18	33.90
4120	Las Vegas, NV–AZ, Mohave, AZ, Clark, NV, Nye, NV*	1.0956	52.67	49.96	48.06	41.58
4150	Lawrence, KS, Douglas, KS	0.8665	43.35	41.12	39.56	34.22
4200	Lawton, OK, Comanche, OK	0.8431	42.40	40.22	38.69	33.47
4243	Lewiston-Auburn, ME, Androscoggin, ME	0.9484	46.68	44.28	42.60	36.85
4280	Lexington, KY, Bourbon, KY, Clark, KY, Fayette, KY, Jessamine, KY, Madison, KY, Scott, KY, Woodford, KY	0.8359	42.11	39.94	38.42	33.24
4320	Lima, OH, Allen, OH, Auglaize, OH	0.8801	43.90	41.64	40.06	34.66
4360	Lincoln, NE, Lancaster, NE	0.9234	45.66	43.31	41.67	36.05
4400	Little Rock-North Little Rock, AR, Faulkner, AR, Lonoke, AR, Pulaski, AR, Saline, AR	0.8665	43.35	41.12	39.56	34.22
4420	Longview-Marshall, TX, Gregg, TX, Harrison, TX, Upshur, TX	0.8713	43.55	41.30	39.73	34.38
4480	Los Angeles-Long Beach, CA, Los Angeles, CA*	1.2441	58.71	55.69	53.57	46.35

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
4520	Louisville, KY–IN, Clark, IN, Floyd, IN, Harrison, IN, Scott, IN, Bullitt, KY, Jefferson, KY, Oldham, KY	0.9522	46.84	44.43	42.74	36.98
4600	Lubbock, TX, Lubbock, TX	0.8577	42.99	40.78	39.23	33.94
4640	Lynchburg, VA, Amherst, VA, Bedford, VA, Bedford City, VA, Campbell, VA, Lynchburg City, VA	0.8116	41.12	39.00	37.52	32.46
4680	Macon, GA, Bibb, GA, Houston, GA, Jones, GA, Peach, GA, Twiggs, GA	0.8894	44.28	42.00	40.41	34.96
4720	Madison, WI, Dane, WI	1.0100	49.19	46.66	44.88	38.83
4800	Mansfield, OH, Crawford, OH, Richland, OH	0.8591	43.05	40.83	39.28	33.99
4840	Mayaguez, PR, Anasco, PR, Cabo Rojo, PR, Hormigueros, PR, Mayaguez, PR, Sabana Grande, PR, San German, PR[1]	0.4248	26.20	24.85	23.90	20.68
4880	McAllen-Edinburg-Mission, TX, Hidalgo, TX	0.8552	42.89	40.68	39.14	33.86
4890	Medford-Ashland, OR, Jackson, OR	1.0148	49.38	46.84	45.06	38.99
4900	Melbourne-Titusville-Palm Bay, FL, Brevard FL	0.9140	45.28	42.95	41.32	35.75
4920	Memphis, TN–AR–MS, Crittenden, AR, DeSoto, MS, Fayette, TN, Shelby, TN, Tipton, TN*	0.8231	41.59	39.45	37.94	32.83
4940	Merced, CA, Merced, CA	1.0744	51.81	49.14	47.27	40.90
5000	Miami, FL, Dade, FL*	1.0017	48.85	46.34	44.57	38.56
5015	Middlesex-Somerset-Hunterdon, NJ, Hunterdon, NJ, Middlesex, NJ, Somerset, NJ*	1.0969	52.72	50.01	48.11	41.62
5080	Milwaukee-Waukesha, WI, Milwaukee, WI, Ozaukee, WI, Washington, WI, Waukesha, WI*	0.9721	47.65	45.19	43.47	37.61
5120	Minneapolis-St. Paul, MN–WI, Anoka, MN, Carver, MN, Chisago, MN, Dakota, MN, Hennepin, MN, Isanti, MN, Ramsey, MN, Scott, MN, Sherburne, MN, Washington, MN, Wright, MN, Pierce, WI, St. Croix, WI*	1.0862	52.29	49.60	47.71	41.28
5160	Mobile, AL, Baldwin, AL, Mobile, AL	0.8044	40.82	38.72	37.25	32.23
5170	Modesto, CA, Stanislaus, CA	1.0684	51.56	48.91	47.05	40.73
5190	Monmouth-Ocean, NJ, Monmouth, NJ, Ocean, NJ*	1.0919	52.52	49.82	47.92	41.46
5200	Monroe, LA, Ouachita, LA	0.8276	41.77	39.62	38.11	32.97
5240	Montgomery, AL, Autauga, AL, Elmore, AL, Montgomery, AL	0.7938	40.39	38.31	36.86	31.89
5280	Muncie, IN, Delaware, IN	0.9791	47.93	45.46	43.73	37.84
5330	Myrtle Beach, SC, Horry, SC	0.7852	40.04	37.98	36.54	31.61
5345	Naples, FL, Collier, FL	1.0280	49.92	47.35	45.55	39.41
5360	Nashville, TN, Cheatham, TN, Davidson, TN, Dickson, TN, Robertson, TN, Rutherford TN, Sumner, TN, Williamson, TN, Wilson, TN*	0.9153	45.34	43.00	41.37	35.79
5380	Nassau-Suffolk, NY, Nassau, NY, Suffolk, NY*	1.3654	63.64	60.37	58.07	50.24
5483	New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT Fairfield, CT New Haven, CT*	1.2805	60.19	57.09	54.92	47.52
5523	New London-Norwich, CT, New London, CT	1.2359	58.37	55.37	53.26	46.08
5560	New Orleans, LA, Jefferson, LA, Orleans, LA, Plaquemines, LA, St. Bernard, LA, St. Charles, LA, St. James, LA, St. John The Baptist, LA, St. Tammany, LA*	0.9368	46.21	43.83	42.16	36.48
5600	New York, NY, Bronx, NY, Kings, NY, New York, NY, Putnam, NY, Queens, NY, Richmond, NY, Rockland, NY, Westchester, NY*	1.4266	66.13	62.73	60.34	52.21
5640	Newark, NJ, Essex, NJ, Morris, NJ, Sussex, NJ, Union, NJ, Warren, NJ*	1.1855	56.32	53.43	51.39	44.47
5660	Newburgh, NY–PA, Orange, NY, Pike, PA	1.0889	52.40	49.70	47.81	41.36
5720	Norfolk-Virginia Beach-Newport News, VA–NC, Currituck, NC, Chesapeake City, VA, Gloucester, VA, Hampton City, VA, Isle of Wight, VA, James City, VA, Mathews, VA, Newport News City, VA, Norfolk City, VA, Poquoson City, VA, Portsmouth City, VA, Suffolk City, VA, Virginia Beach City, VA, Williamsburg City, VA, York, VA*	0.8414	42.33	40.15	38.62	33.42
5775	Oakland, CA, Alameda, CA, Contra Costa, CA*	1.5110	69.56	65.98	63.47	54.92
5790	Ocala, FL, Marion, FL	0.9177	45.43	43.09	41.46	35.87
5800	Odessa-Midland, TX, Ector, TX, Midland, TX	0.8549	42.88	40.67	38.13	33.85
5880	Oklahoma City, OK, Canadian, OK, Cleveland, OK, Logan, OK, McClain, OK, Oklahoma, OK, Pottawatomie, OK*	0.8437	42.42	40.24	38.71	33.49
5910	Olympia, WA, Thurston, WA	1.0774	51.93	49.26	47.38	41.00
5920	Omaha, NE–IA, Pottawattamie, IA, Cass, NE, Douglas, NE, Sarpy, NE, Washington, NE	0.9555	46.97	44.55	42.86	37.08

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
5945	Orange County, CA, Orange, CA*	1.2061	57.16	54.22	52.16	45.13
5960	Orlando, FL, Lake, FL, Orange, FL, Osceola, FL, Seminole, FL*	0.9545	46.93	44.51	42.82	37.05
5990	Owensboro, KY, Daviess, KY	0.7635	39.16	37.15	35.73	30.92
6015	Panama City, FL, Bay, FL	0.8125	41.15	39.04	37.55	32.49
6020	Parkersburg-Marietta, WV–OH, Washington, OH, Wood, WV	0.7939	40.40	38.32	36.86	31.89
6080	Pensacola, FL, Escambia, FL, Santa Rosa, FL	0.8267	41.73	39.58	38.08	32.95
6120	Peoria-Pekin, IL, Peoria, IL, Tazewell, IL, Woodford, IL	0.8975	44.61	42.32	40.71	35.22
6160	Philadelphia, PA–NJ, Burlington, NJ, Camden, NJ, Gloucester, NJ, Salem, NJ, Bucks, PA, Chester, PA, Delaware, PA, Montgomery, PA, Philadelphia, PA*	1.1326	54.17	51.39	49.43	42.77
6200	Phoenix-Mesa, AZ, Maricopa, AZ, Pinal, AZ*	0.9888	48.32	45.84	44.09	38.15
6240	Pine Bluff, AR, Jefferson, AR	0.7948	40.43	38.35	36.89	31.92
6280	Pittsburgh, PA, Allegheny, PA, Beaver, PA, Butler, PA, Fayette, PA, Washington, PA, Westmoreland, PA*	0.9778	47.88	45.41	43.69	37.80
6323	Pittsfield, MA, Berkshire, MA	1.0636	51.37	48.72	46.87	40.55
6340	Pocatello, ID, Bannock, ID	0.8854	44.12	41.85	40.26	34.83
6360	Ponce, PR, Guayanilla, PR, Juana Diaz, PR, Penuelas, PR, Ponce, PR, Villalba, PR, Yauco, PR [1]	0.4722	28.12	26.68	25.66	22.20
6403	Portland, ME, Cumberland, ME, Sagadahoc, ME, York, ME	0.9695	47.54	45.09	43.38	37.53
6440	Portland-Vancouver, OR–WA, Clackamas, OR, Columbia, OR, Multnomah, OR, Washington, OR, Yamhill, OR, Clark, WA*	1.1324	54.17	51.38	49.42	42.76
6483	Providence-Warwick, RI, Bristol, RI, Kent, RI, Newport, RI, Providence, RI, Washington, RI	1.1180	53.58	50.82	48.89	42.30
6520	Provo-Orem, UT, Utah, UT	1.0196	49.58	47.03	45.24	39.14
6560	Pueblo, CO, Pueblo, CO	0.8350	42.07	39.90	38.39	33.21
6580	Punta Gorda, FL, Charlotte, FL	0.8419	42.35	40.17	38.64	33.43
6600	Racine, WI Racine, WI	0.8905	44.33	42.05	40.45	34.99
6640	Raleigh-Durham-Chapel Hill, NC, Chatham, NC, Durham, NC, Franklin, NC, Johnston, NC, Orange, NC, Wake, NC	0.9805	47.99	45.52	43.79	37.88
6660	Rapid City, SD, Pennington, SD	0.8522	42.77	40.57	39.02	33.76
6680	Reading, PA, Berks, PA	0.9520	46.83	44.42	42.73	36.97
6690	Redding, CA, Shasta, CA	1.1697	55.68	52.82	50.81	43.96
6720	Reno, NV, Washoe, NV	1.1105	53.27	50.53	48.61	42.06
6740	Richland-Kennewick-Pasco, WA, Benton, WA, Franklin, WA	1.0049	48.98	46.46	44.69	38.67
6760	Richmond-Petersburg, VA, Charles City County, VA, Chesterfield, VA, Colonial Heights City, VA, Dinwiddie, VA, Goochland, VA, Hanover, VA, Henrico, VA, Hopewell City, VA, New Kent, VA, Petersburg City, VA, Powhatan, VA, Prince George, VA, Richmond City, VA	0.9267	45.80	43.44	41.79	36.16
6780	Riverside-San Bernardino, CA, Riverside, CA, San Bernardino, CA*	1.1468	54.75	51.93	49.96	43.22
6800	Roanoke, VA, Botetourt, VA, Roanoke, VA, Roanoke City, VA, Salem City, VA	0.8771	43.78	41.53	39.95	34.56
6820	Rochester, MN, Olmsted, MN	1.0511	50.86	48.24	46.09	39.88
6840	Rochester, NY, Genesee, NY, Livingston, NY, Monroe, NY, Ontario, NY, Orleans, NY, Wayne, NY*	0.9725	47.66	45.21	43.49	37.63
6880	Rockford, IL, Boone, IL, Ogle, IL, Winnebago, IL	0.9065	44.98	42.66	41.04	35.51
6895	Rocky Mount, NC, Edgecombe, NC, Nash, NC	0.9026	44.82	42.51	40.90	35.38
6920	Sacramento, CA, El Dorado, CA, Placer, CA, Sacramento, CA*	1.2449	58.74	55.72	53.60	46.37
6960	Saginaw-Bay City-Midland, MI, Bay, MI, Midland, MI, Saginaw, MI	0.9688	47.51	45.07	43.35	37.51
6980	St. Cloud, MN, Benton, MN, Stearns, MN	0.9532	46.88	44.46	42.77	37.01
7000	St. Joseph, MO, Andrews, MO, Buchanan, MO	0.8619	43.16	40.94	39.38	34.08
7040	St. Louis, MO–IL, Clinton, IL, Jersey, IL, Madison, IL, Monroe, IL, St. Clair, IL, Franklin, MO, Jefferson, MO, Lincoln, MO, St. Charles, MO, St. Louis, MO, St. Louis City, MO, Warren, MO*	0.9093	45.09	42.77	41.14	35.60
7080	Salem, OR, Marion, OR, Polk, OR	0.9805	47.99	45.52	43.79	37.88
7120	Salinas, CA, Monterey, CA	1.3912	64.69	61.36	59.03	51.07
7160	Salt Lake City-Ogden, UT, Davis, UT, Salt Lake, UT, Weber, UT*	0.9754	47.78	45.32	43.60	37.72

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	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
7200	San Angelo, TX, Tom Green, TX	0.7637	39.17	37.15	35.74	30.92
7240	San Antonio, TX, Bexar, TX, Comal, TX, Guadalupe, TX, Wilson, TX*	0.8456	42.50	40.31	38.78	33.55
7320	San Diego, CA, San Diego, CA*	1.2230	57.85	54.87	52.79	45.67
7360	San Francisco, CA, Marin, CA, San Francisco, CA, San Mateo, CA*	1.4373	66.57	63.14	60.74	52.55
7400	San Jose, CA, Santa Clara, CA*	1.4634	67.63	64.15	61.71	53.39
7440	San Juan-Bayamon, PR, Aguas Buenas, PR, Barceloneta, PR, Bayamon, PR, Canovanas, PR, Carolina, PR, Catano, PR, Ceiba, PR, Comerio, PR, Corozal, PR, Dorado, PR, Fajardo, PR, Florida, PR, Guaynabo, PR, Humacao, PR, Juncos, PR, Los Piedras, PR, Loiza, PR, Luguillo, PR, Manati, PR, Morovis, PR, Naguabo, PR, Naranjito, PR, Rio Grande, PR, San Juan, PR, Toa Alta, PR, Toa Baja, PR, Trujillo Alto, PR, Vega Alta, PR, Vega Baja, PR, Yabucoa, PR[1]*	0.4542	27.39	25.98	24.99	21.62
7460	San Luis Obispo-Atascadero-Paso Robles, CA, San Luis Obispo, CA	1.1653	55.50	52.65	50.64	43.82
7480	Santa Barbara-Santa Maria-Lompoc, CA, Santa Barbara, CA	1.1331	54.19	51.40	49.45	42.78
7485	Santa Cruz-Watsonville, CA, Santa Cruz, CA	1.3627	63.53	60.26	57.97	50.16
7490	Santa Fe, NM, Los Alamos, NM, Santa Fe, NM	1.0909	52.48	49.78	47.88	41.43
7500	Santa Rosa, CA, Sonoma, CA	1.2586	59.30	56.25	54.11	46.81
7510	Sarasota-Bradenton, FL, Manatee, FL, Sarasota, FL	0.9866	48.24	45.75	44.01	38.08
7520	Savannah, GA, Bryan, GA, Chatham, GA, Effingham, GA	0.9725	47.66	45.21	43.49	37.63
7560	Scranton-Wilkes-Barre-Hazleton, PA, Columbia, PA, Lackawanna, PA, Luzerne, PA, Wyoming, PA	0.8821	43.98	41.72	40.13	34.72
7600	Seattle-Bellevue-Everett, WA, Island, WA, King, WA, Snohomish, WA*	1.1474	54.78	51.96	49.98	43.24
7610	Sharon, PA, Mercer, PA	0.8955	44.53	42.24	40.63	35.15
7620	Sheboygan, WI, Sheboygan, WI	0.7825	39.93	37.88	36.44	31.53
7640	Sherman-Denison, TX, Grayson, TX	0.8682	43.42	41.19	39.62	34.28
7680	Shreveport-Bossier City, LA, Bossier, LA, Caddo, LA, Webster, LA	0.9433	46.47	44.08	42.41	36.69
7720	Sioux City, IA–NE, Woodbury, IA, Dakota, NE	0.8379	42.19	40.02	38.49	33.31
7760	Sioux Falls, SD, Lincoln, SD, Minnehaha, SD	0.8688	43.44	41.21	39.64	34.30
7800	South Bend, IN, St. Joseph, IN	1.0013	48.83	46.32	44.56	38.55
7840	Spokane, WA, Spokane, WA	1.0607	51.25	48.61	46.76	40.46
7880	Springfield, IL, Menard, IL, Sangamon, IL	0.8740	43.66	41.41	39.83	34.46
7920	Springfield, MO, Christian, MO, Greene, MO, Webster, MO	0.7885	40.18	38.11	36.66	31.72
8003	Springfield, MA, Hampden, MA, Hampshire, MA	1.0670	51.51	48.85	47.00	40.66
8050	State College, PA, Centre, PA	0.9614	47.21	44.78	43.08	37.27
8080	Steubenville-Weirton, OH–WV, Jefferson, OH, Brooke, WV, Hancock, WV	0.8331	41.99	39.83	38.32	33.15
8120	Stockton-Lodi, CA, San Joaquin, CA	1.1420	54.56	51.75	49.78	43.07
8140	Sumter, SC, Sumter, SC	0.7760	39.67	37.63	36.20	31.32
8160	Syracuse, NY, Cayuga, NY, Madison, NY, Onondaga, NY, Oswego, NY	0.9469	46.62	44.22	42.54	36.81
8200	Tacoma, WA, Pierce, WA	1.0946	52.63	49.92	48.02	41.55
8240	Tallahassee, FL, Gadsden, FL, Leon, FL	0.8379	42.19	40.02	38.49	33.31
8280	Tampa-St. Petersburg-Clearwater, FL, Hernando, FL, Hillsborough, FL, Pasco, FL, Pinellas, FL*	0.9323	46.03	43.66	42.00	36.34
8320	Terre Haute, IN, Clay, IN, Vermillion, IN, Vigo, IN	0.8659	43.33	41.10	39.53	34.20
8360	Texarkana, AR-Texarkana, TX, Miller, AR, Bowie, TX	0.8570	42.96	40.75	39.20	33.92
8400	Toledo, OH, Fulton, OH, Lucas, OH, Wood, OH	1.0443	50.58	47.98	46.15	39.93
8440	Topeka, KS, Shawnee, KS	1.0166	49.46	46.91	45.13	39.04
8480	Trenton, NJ, Mercer, NJ	1.0633	51.35	48.71	46.86	40.54
8520	Tucson, AZ, Pima, AZ	0.9140	45.28	42.95	41.32	35.75
8560	Tulsa, OK, Creek, OK, Osage, OK, Rogers, OK, Tulsa, OK, Wagoner, OK	0.8159	41.29	39.17	37.68	32.60
8600	Tuscaloosa, AL, Tuscaloosa, AL	0.7846	40.02	37.96	36.52	31.59
8640	Tyler, TX, Smith, TX	1.0075	49.09	46.56	44.79	38.75
8680	Utica-Rome, NY, Herkimer, NY, Oneida, NY	0.8480	42.60	40.41	38.87	33.63
8720	Vallejo-Fairfield-Napa, CA, Napa, CA, Solano, CA	1.4057	65.28	61.92	59.57	51.54
8735	Ventura, CA, Ventura, CA	1.1545	55.06	52.23	50.24	43.47
8750	Victoria, TX, Victoria, TX	0.8459	42.51	40.32	38.79	33.56

TABLE I.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY UPPER GUIDELINE FOR URBAN AREAS—Continued

	Urban area (constituent counties or county equivalents)	Index	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy
8760	Vineland-Millville-Bridgeton, NJ, Cumberland, NJ	1.0072	49.06	46.55	44.78	38.74
8780	Visalia-Tulare-Porterville, CA, Tulare, CA	1.0231	49.72	47.16	45.37	39.25
8800	Waco, TX, McLennan, TX	0.7834	39.97	37.91	36.47	31.56
8840	Washington, DC–MD–VA–WV, District of Columbia, DC, Calvert, MD, Charles, MD, Frederick, MD, Montgomery, MD, Prince Georges, MD, Alexandria City, VA, Arlington, VA, Clarke, VA, Culpeper, VA, Fairfax, VA, Fairfax City, VA, Falls Church City, VA, Fauquier, VA, Fredericksburg City, VA, King George, VA, Loudoun, VA, Manassas City, VA, Manassas Park City, VA, Prince William, VA, Spotsylvania, VA, Stafford, VA, Warren, VA, Berkeley, WV, Jefferson, WV*	1.0909	52.48	49.78	47.88	41.43
8920	Waterloo-Cedar Falls, IA, Black Hawk, IA	0.8774	43.79	41.54	39.96	34.57
8940	Wausau, WI, Marathon, WI	1.0405	50.43	47.83	46.01	39.81
8960	West Palm Beach-Boca Raton, FL, Palm Beach, FL	1.0283	49.93	47.36	45.56	39.42
9000	Wheeling, OH–WV, Belmont, OH, Marshall, WV, Ohio, WV	0.7623	39.11	37.10	35.69	30.88
9040	Wichita, KS, Butler, KS, Harvey, KS, Sedgwick, KS	0.9443	46.51	44.12	42.44	36.72
9080	Wichita Falls, TX, Archer, TX, Wichita, TX	0.8105	41.07	38.96	37.48	32.43
9140	Williamsport, PA, Lycoming, PA	0.8534	42.82	40.61	39.07	33.80
9160	Wilmington-Newark, DE–MD, New Castle, DE, Cecil, MD	1.1405	54.49	51.69	49.72	43.02
9200	Wilmington, NC, New Hanover, NC, Brunswick, NC	0.9118	45.19	42.87	41.24	35.68
9260	Yakima, WA, Yakima, WA	1.0105	49.21	46.68	44.90	38.85
9270	Yolo, CA Yolo, CA	1.1535	55.02	52.19	50.21	43.44
9280	York, PA, York, PA	0.9176	45.43	43.09	41.45	35.86
9320	Youngstown-Warren, OH, Columbiana, OH, Mahoning, OH, Trumbull, OH	0.9819	48.04	45.57	43.84	37.93
9340	Yuba City, CA, Sutter, CA Yuba, CA	1.0496	50.80	48.18	46.35	40.10
9360	Yuma, AZ, Yuma, AZ	0.9572	47.04	44.62	42.92	37.14

[1] Nonlabor portion increased in the following areas based on cost of living surveys conducted by the U.S. Office of Personnel Management:

Location	Adjustment factor
Alaska	1.250
Hawaii	1.225
Puerto Rico	1.100

*Large Urban Area.

TABLE II.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY GUIDELINE AMOUNTS FOR NONURBAN AREAS

Nonurban area	Wage index	Physical therapy	Occupational therapy	Speech language therapy	Respiratory therapy
Alabama	0.8477	42.59	40.39	38.86	33.62
Alaska [1]	1.3329	64.35	61.04	58.71	50.80
Arizona	0.9718	47.63	45.18	43.46	37.60
Arkansas	0.8270	41.74	39.60	38.09	32.96
California	1.2551	59.16	56.11	53.98	46.70
Colorado	0.9895	48.35	45.86	44.12	38.17
Connecticut	1.2644	59.53	56.47	54.32	47.00
Delaware	1.1100	53.25	50.51	48.59	42.04
Florida	0.9589	47.11	44.68	42.98	37.19
Georgia	0.9596	47.14	44.71	43.01	37.21
Hawaii [1]	1.1552	56.92	53.99	51.93	44.93
Idaho	0.9457	46.57	44.18	42.49	36.77
Illinois	1.0368	50.28	47.69	45.88	39.69
Indiana	0.9570	47.03	44.61	42.91	37.13
Iowa	0.8889	44.26	41.98	40.39	34.94
Kansas	0.9553	46.96	44.55	42.85	37.07
Kentucky	0.9022	44.80	42.50	40.88	35.37
Louisiana	0.8884	44.24	41.96	40.37	34.93
Maine	0.9607	47.18	44.75	43.05	37.25
Maryland	1.0011	48.82	46.31	44.55	38.55
Massachusetts	1.1619	55.36	52.52	50.52	43.71
Michigan	1.0717	51.70	49.04	47.17	40.81

TABLE II.—GEOGRAPHIC ADJUSTMENT INDEX AND SALARY EQUIVALENCY GUIDELINE AMOUNTS FOR NONURBAN AREAS—Continued

Nonurban area	Wage index	Physical therapy	Occupational therapy	Speech language therapy	Respiratory therapy
Minnesota	1.0586	51.16	48.53	46.68	40.39
Mississippi	0.8033	40.78	38.68	37.21	32.19
Missouri	0.8996	44.70	42.40	40.78	35.29
Montana	0.8980	44.63	42.33	40.72	35.23
Nebraska	0.9479	46.66	44.26	42.58	36.84
Nevada	1.1012	52.90	50.17	48.27	41.76
New Hampshire	1.1705	55.71	52.85	50.84	43.98
New Jersey [2]	.....	.....	.....	.....	.....
New Mexico	0.9501	46.75	44.34	42.66	36.91
New York	1.2428	58.66	55.64	53.52	46.31
North Carolina	0.9456	46.57	44.17	42.49	36.76
North Dakota	0.8717	43.56	41.32	39.75	34.39
Ohio	0.9764	47.82	45.36	43.63	37.75
Oklahoma	0.8320	41.95	39.79	38.28	33.12
Oregon	1.1085	53.19	50.46	48.54	41.99
Pennsylvania	1.0269	49.87	47.31	45.51	39.37
Puerto Rico [1]	0.4539	27.38	25.97	24.98	21.62
Rhode Island [2]	.....	.....	.....	.....	.....
South Carolina	0.8964	44.57	42.27	40.67	35.18
South Dakota	0.8638	43.24	41.02	39.46	34.14
Tennessee	0.8711	43.54	41.30	39.73	34.37
Texas	0.9492	46.71	44.31	42.62	36.88
Utah	0.9824	48.06	45.59	43.86	37.94
Vermont	1.0148	49.38	46.84	45.06	38.99
Virginia	0.9249	45.73	43.37	41.72	36.10
Washington	1.1105	53.27	50.53	48.61	42.06
West Virginia	0.9145	45.30	42.97	41.34	35.76
Wisconsin	0.9480	46.67	44.26	42.58	36.84
Wyoming	0.8386	42.22	40.04	38.52	33.33

[1] Nonlabor portion increased in the following areas based on cost of living surveys conducted by the U.S. Office of Personnel Management:

Location	Adjustment factor
Alaska	1.250
Hawaii	1.225
Puerto Rico	1.100

[2] All counties within the State are classified urban.

E. Salary Equivalency Amount Updates

The adjusted hourly salary equivalency amounts were developed using fourth quarter 1995 wage level data, 1994 fringe benefit data as a share of wage levels, and fourth quarter 1995 dollar amounts for rent and other expenses (updated from January 1991 to the fourth quarter of 1995 using their price proxies). In order to account for input price inflation between the base period (fourth quarter 1995), the illustrative implementation period of April 1997, and subsequent updated periods, HCFA developed therapy-specific input price indexes, using as weights the fourth quarter 1995 relative importance factors of the salary equivalency market baskets guideline. The therapy-specific input price indexes are fixed-weight, or Laspeyres type, input price indexes that were constructed in two steps. First, a base period (fourth quarter 1995) was selected and the proportion of total costs accounted for by designated cost categories was estimated. In the second step, a rate of price increase for each cost category was multiplied by the expenditure's relative importance for that category. (Section II.B of this preamble discusses the methodology used to develop the base-period weights (fourth quarter 1995) for each therapy-specific input price index.) The sum of these products for all cost categories yielded the percentage change in the input price index.

Five indexes (base = fourth quarter 1995) were developed initially: One each representing physical therapy, occupational therapy, speech language pathology, respiratory therapy, and a weighted composite index of all four therapy types. The individual therapy indexes were built into the composite index based upon the relative proportion of total therapy services. All input price indexes have the same cost categories and price proxies. However the base period weights vary because of slight differences in the cost structures associated with providing each type of therapy. Table III presents the therapy-specific base period weights as well as the price proxies proposed to represent inflation for each cost category.

TABLE III.—THERAPY SPECIFIC ADJUSTED HOURLY SALARY EQUIVALENCY INPUT PRICE INDEXES (BASE PERIOD: FOURTH QUARTER 1995=100.000)

	Base period weights by therapy type(1)					Proposed price proxies
	Physical therapy	Occupational therapy	Speech language pathology	Respiratory therapy	Composite therapy index	
Total	100.000	100.000	100.000	100.000	100.000	
A. Therapist Compensation	73.720	72.304	71.208	66.733	71.900	
Wages	59.326	58.186	57.304	53.703	57.860	50% ECI Civilian Hospital Workers/50% ECI Private Professional & Technical Workers Wages.
Benefits	14.395	14.118	13.904	13.030	14.039	50% ECI Civilian Hospital Workers/50% ECI Private Professional & Technical Workers Benefits.
B. Overhead	26.273	27.696	28.792	33.275	28.099	
Other Compensation	10.733	11.314	11.762	13.593	11.478	
Other Wages	8.779	9.255	9.621	11.119	9.389	
Clerical Wages	4.422	4.661	4.846	5.600	4.729	ECI Wages Private Administrative Support Including Clerical.(2)
Managerial Wages	4.357	4.593	4.775	5.519	4.660	ECI Wages Private Executive, Administrative, & Managerial.(2)
Other Benefits	1.953	2.059	2.141	2.474	2.089	
Clerical Benefits	0.987	1.041	1.082	1.251	1.056	ECI Benefits Private Administrative Support Including Clerical.(2)
Managerial Benefits	0.966	1.018	1.059	1.223	1.033	ECI Benefits Private Executive, Administrative, & Managerial.(2)
Office Costs	6.482	6.834	7.104	8.210	6.933	CPI–U Housing.
Other Costs	9.058	9.549	9.927	11.472	9.688	CPI–U All Items Less Food & Energy.
Composite Index Share (3)	0.313	0.412	0.153	0.122	1.000	

(1) Base year weights were developed for each type of therapy offered under arrangement. These weights are multiplied by price index levels to measure composite price change over time.
(2) ECI=Employment Cost Index. ECIs are fixed-weighted indexes which track labor cost free from the influence of employment shifts among occupations and industries.
(3) The composite index share represents the proportion that each therapy index type represents of the composite index. These shares were derived from estimates of the 1995 shares of therapy services offered under arrangement by therapy type.

Despite the differences in the fourth quarter 1995 base-year weights for the four therapists' input price indexes, there were virtually no differences in the rates of increase for these indexes. Therefore, we propose to use the composite index to adjust the hourly salary equivalency amounts for inflation. Using the composite index is advantageous because of its administrative simplicity and demonstrated validity. Because the five indexes produce rates of increase that are essentially the same, the gain in administrative ease does not come at the expense of the validity of the inflation adjustment being used. Table IV, which presents the calendar year rates of increase in the four therapist indexes and the composite index, demonstrates their similarity.

TABLE IV.—THERAPY INPUT PRICE INDEXES FOR FORECASTING THE INCREASE IN THE COST OF THERAPY SERVICES, CALENDAR YEARS 1991–1999

Calendar year	Physical therapist index	Occupational therapist index	Speech language pathologist index	Respiratory therapist index	Composite therapist index [1]
Historical					
1991	4.8	4.8	4.8	4.8	4.8
1992	4.0	4.0	4.0	4.0	4.0
1993	3.5	3.5	3.5	3.5	3.5
1994	3.0	3.0	3.1	3.0	3.1
1995	2.6	2.6	2.6	2.6	2.6
Forecast [2]					
1996	3.1	3.1	3.1	3.1	3.1
1997	3.2	3.2	3.2	3.2	3.2
1998	3.2	3.2	3.2	3.2	3.2
1999	3.3	3.3	3.3	3.3	3.3

Released by: HCFA, OACT, Office of National Health Statistics.
[1] The outlays for services rendered in 1995 were used to develop the outlay-weighted composite therapy index.
[2] Source: DRI/McGraw-Hill HHC 3rd QTR 1996;@USSIM/TRENDL25YR0896@CISSIM/CONTROL963.

Table IV shows calendar year rates of inflation for historical years 1991 through 1995 and forecasted years 1996 through 1999. Salary equivalency amount adjustments will be made on a monthly basis using the factors in Table V.

TABLE V: ADJUSTED HOURLY SALARY EQUIVALENCY AMOUNT MONTHLY INFLATION FACTORS USING OUTLAY WEIGHTED COMPOSITE INDEX

[An example of how to use the inflation factors follows this table.]

Salary equivalency period		Period inflation factors
Month	Year	
1 April	1997	1.00000
2 May	1997	1.00272
3 June	1997	1.00546
4 July	1997	1.00819
5 August	1997	1.01094
6 September	1997	1.01369
7 October	1997	1.01646
8 November	1997	1.01922
9 December	1997	1.02200
10 January	1998	1.02478
11 February	1998	1.02758
12 March	1998	1.03037
13 April	1998	1.03318
14 May	1998	1.03600
15 June	1998	1.03882
16 July	1998	1.04165
17 August	1998	1.04449
18 September	1998	1.04733
19 October	1998	1.05018
20 November	1998	1.05304
21 December	1998	1.05591
22 January	1999	1.05879
23 February	1999	1.06167
24 March	1999	1.06456
25 April	1999	1.06746
26 May	1999	1.07037
27 June	1999	1.07329
28 July	1999	1.07621
29 August	1999	1.07914
30 September	1999	1.08208
31 October	1999	1.08503
32 November	1999	1.08799
33 December	1999	1.09095
34 January	2000	1.09392
35 February	2000	1.09690
36 March	2000	1.09989

Source: DRI/McGraw-Hill HHC 3rd QTR 1996; @USSIM/TRENDL25YR0896

For example, the proposed national salary equivalency guideline amount for physical therapists for cost reporting periods beginning April 1997 is $48.78. The salary equivalency guideline amount for cost reporting periods beginning in May 1997 would be determined as follows:

April 1997 national physical therapy salary equivalency amount $48.78
May 1997 monthly inflation factor 1.00272
May 1997 national salary equivalency amount $48.91

We have developed monthly adjustment factors for May 1997 through March 2000. If we do not publish new schedules of guidelines for cost reporting periods beginning on or after April 1, 2000, or do not announce other changes in the schedules, the schedules would remain in effect, increased by the appropriate adjustment factor (0.00272 monthly, compounded)[1], until new guideline schedules are issued. This is equivalent to a compounded annual rate of increase of 3.3 percent. The 3.3 percent rate of increase in the proposed guidelines is based upon the forecast rate of increase in the composite therapists input price index that HCFA's Office of the Actuary developed. For the period between 1997 and 1999, the price proxies in the therapists input price index were forecast in DRI/McGraw-Hill's 1996 third quarter forecast.

The 3.3 percent forecast rate of increase is based upon the average annual rate of increase for the period between 1997 and 1999. The 3.3 and 7.2 percent rates of increase are applied to their respective salary equivalency guidelines in different ways. The 3.3 percent is applied to the guidelines we are now proposing in a multiplicative fashion. That is, the salary equivalency guideline amount for each month is multiplied by one plus the 12th root of the 3.3 percent average annual rate of increase for each month moved away from the guideline base period. Conversely, the 7.2 percent rate of increase was applied by adding 0.6 percent of the October 1982 base value to the adjustment factor for each month after the guideline base period. The effect of using the additive adjustment factor rather than the multiplicative factor is that the additive factor gets progressively smaller in percentage terms each year.

Choosing appropriate wage and price proxies for each expense category necessarily involved making tradeoffs and exercising judgment. HCFA used four, sometimes conflicting, criteria to evaluate the strengths and weaknesses of each proxy in the therapy-specific input price indexes: relevance, reliability, timeliness, and time-series length. A relevant price variable should appropriately represent price changes for specific goods or services within the expense category. Relevance may encompass judgments about relative efficiency in the market generating the price and wage increases and may include normative factors relating to fairness and national policy objectives.

[1] The monthly rate of inflation is 0.00272. It is necessary to create the multiplicative factor that produces the next monthly level. Each month's factor (Table V) is 1.00272 times the previous month's factor.

The second criterion, reliability, concerns sampling variability. If the proxy wage-price variable has a high sampling variability or inexplicable erratic patterns over time, its value is greatly diminished since it is unlikely to accurately reflect price changes in the associated expenditure category. In some cases, low sampling variability can conflict with relevance, since the more specifically the price variable is defined in terms of service, commodity, or geographic area, the higher the potential sampling variability. An example of such a conflict is the tradeoff that must be made when considering two proxies, one of which is the product of a rigorously designed survey methodology for a somewhat broader occupational or industry grouping, while the other more closely surveys the targeted industry or occupation, but from a nonscientifically designed, nonrepresentative sample. Timeliness of actual published data is the third criterion. For this reason, monthly and quarterly data take priority over annual data. The fourth criterion is the length of time the time-series data have been available. A well-established time series is needed to provide a valid base from which to forecast future price changes in the series.

The price proxies for the therapy-specific input price indexes are based on BLS data and are one of the two following types:

- Employment Cost Indexes (ECIs), which measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes that strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix.

- Consumer Price Indexes (CPIs), which measure change in the prices of final goods and services purchased by the typical consumer. They are fixed-weight price measures.

These price proxies ''best balance'' the criteria of relevance, reliability, timeliness, and time-series length. For reasons that are discussed later, the main issue in selecting price proxies for the Therapists Input Price Index is relevance.

In selecting price proxies for updating payment rates for various provider types (hospitals, offices of physicians, SNFs, home health agencies, etc.), HCFA considers using internal price proxies (that is, health-sector-specific data), external price proxies (that is, exclusively based upon economy-wide

price proxies), or a blend of internal and external price proxies based upon the competitive structure of the market and Medicare reasonable cost principles.[2]

It is generally accepted that prices for most nonlabor inputs are not directly influenced or biased by health-sector-specific market forces. As a result, we propose to use economy-wide price proxies for approximate price changes for the nonlabor inputs. However, workers in the four therapist occupations and industries are potentially affected by market imperfections associated with both supply and demand. Imperfections in these labor markets include third party payment, based at least in part on actual labor costs rather than on costs in efficiently operating competitive labor markets. Limitations on entry and restrictions on job content also potentially influence compensation levels and rates of increase relative to workers with similar education, skills, and work effort, but in different occupations and industries. Therefore, compensation of these workers should not be considered totally free from market imperfections and health industry influence. To the extent that supply and demand imperfections exist, using health-sector-specific compensation proxies could manifest these imperfections and, therefore, would not be the most socially or economically desirable public policy. The Prospective Payment Assessment Commission (ProPAC) has affirmed the blending of internal and external compensation indexes for the prospective payment system. The Physician Payment Review Commission also has recognized that it is appropriate to use external compensation proxies for certain health sector specific occupations such as physicians.

At the same time, it is important to recognize some of the unique features of the four therapist labor markets that suggested that health-sector-specific proxies may also have relevance. HCFA has chosen to balance these internal and external forces by using an equal blend of sector-specific compensation proxies (ECI Civilian Hospital Workers) and economy-wide compensation price proxies (ECI Private Professional and Technical Workers) for measuring therapist compensation price growth.[3] The proxies that are discussed in this section have been chosen to most closely estimate the changes that will occur in the different costs that are part of a salary equivalency guideline. We have already estimated the level of base period costs for the fourth quarter of 1995 that a provider would pay. The rehabilitation therapist input price index (IPI) proxies escalate the base level 1995 fourth quarter costs to the present (using actual price and wage change data) and into the future (with forecasted data). Thus, a March 1998 guideline reflects what we believe the cost to an efficient provider to employ a therapist will be in March 1998. The rehabilitation therapist input price index using these price proxies, weighted by the shares of costs of the expense categories they represent, is used to forecast the escalation of these costs over time. The principles being adopted here are the same as those in HCFA's use of a 50/50 blend of internal and external price proxies elsewhere in Medicare regulatory policy to adjust the professional and technical labor compensation component of the prospective payment system hospital input price index (IPI).[4] In other words, under the prospective payment system hospital IPI (market basket), compensation for physical therapists, occupational therapists, speech language pathologists, and respiratory therapists is updated using the same price proxies and blend as are proposed for these same therapists under arrangements. Consistent with its application in the hospital IPI, HCFA's proposed therapy-specific input price indexes apply the blend to professional and technical occupations only. However, for clerical and managerial workers, who are employed in significant proportions in nonhealth sectors of the overall economy, HCFA's therapy-specific input price indexes use economy-wide compensation proxies to measure price change just as is done in the prospective payment system hospital IPI for clerical and managerial workers.

F. Other Proposed Changes in Policies

1. Optional Travel Allowance

We particularly invite comments from the public on a proposal to extend to other providers the optional travel allowance for therapy furnished under arrangement by an outside contractor that is currently available to HHAs. The optional travel allowance could be used when therapy services are furnished in areas in which geographic distance creates unique labor markets. The actual number of travel hours could be used in lieu of the standard travel allowance. This would be used at the option of the provider, who would maintain time records of visits. Only the actual time spent in travel to reach the visit site would be included in the actual travel time. Payment for the actual travel hours would be based on the adjusted hourly salary equivalency amount for the area, and this amount would not be affected by the additional allowance for administrative-supervisory duties or by any other additional allowances described in section 1412 of the Provider Reimbursement Manual.

2. Data Sources for Future Salary Equivalency Guidelines

We have learned from the BLS that its 1991 ''Occupational Wage Survey: Hospitals, January 1991'' is the last edition of the series that it will produce. Prior BLS occupational wage surveys have been used to establish salary equivalency guidelines for physical therapy and respiratory therapy services furnished under arrangements, and we are proposing to include as two of our data sources the 1989 and 1991 surveys trended forward. We developed our proposed guideline amounts using many survey sources, we invite comments on alternative data sources and methodologies for future updates.

3. Application of Guidelines

We are proposing to revise § 413.106(c) to add a new paragraph (c)(6) that would provide that the salary equivalency guidelines will apply in situations where compensation to a therapist employed by the provider is based, at least in part, on a fee-for-service or on a percentage of income (or commission). The entire compensation would be subject to the guidelines in cases where the nature of the arrangements are most like an under ''arrangement'' situation, although technically the provider may treat the therapists as employees. The guidelines would be applied in this situation so that an employment relationship is not being used to circumvent the guidelines.

Since June 1977, there has been longstanding governing policy at section 1403 of the Provider Reimbursement Manual, Guideline Application, regarding this issue for making payments to providers. That instruction states, ''In situations where compensation, at least in part, is based on a fee-for-service or on a percentage of income (or commission), these arrangements will be considered

[2] See, for example, Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1997 Rates; Final rule. 61 FR 46192, August 30, 1996.

[3] The ECI for Civilian Hospital Workers provides data on hospital workers in the total private economy and the public sector, excluding the Federal Government. Because this price series represents hospitals, it is health sector-specific.

[4] See, for example, Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1997 Rates; Final rule. 61 FR 46192, August 30, 1996.

nonsalary arrangements, and the entire compensation will be subject to the guidelines in this chapter.'' This instruction clearly requires the intermediary to apply the salary equivalency guidelines in cases where the provider is paying the physicial therapists on a fee-for-service basis. This instruction considered the nature of those arrangements and that they are most like an under ''arrangement'' situation, although technically they are employees. Therefore, the instructions further the statutory purpose as reflected in the legislative history of the salary equivalency guidelines. This instruction addresses the fact that HCFA recognizes that certain employment relationships would effectively circumvent the guidelines and provided for these circumstances in section 1403 of the Provider Reimbursement Manual.

4. Limiting Contracted Services To 40 Hours

While we were evaluating the data we used in developing the guideline amounts, we became aware of a tendency for contracted therapy hours in some cases to exceed 40 hours per therapist a week, the amount of hours a full-time employee would generally work. While the Medicare program does not dictate the mode of delivery of therapy services, we do believe that under section 1861(v)(1)(A) of the Act, in making payments for services on a reasonable cost basis, costs incurred that are associated with providing therapy services that exceed the hours of a full-time employee are unnecessary in the efficient delivery of needed health services. It is our understanding that providers obtain services on a contractual basis because the facility does not require the services of a full-time employee and, therefore, it is more efficient to contract for therapy services rather than hire a full-time employee who may spend many hours not delivering services. Therefore, we propose to eliminate the expense factor where the hours of therapy services exceed 40 hours. Because the expense factor is associated with costs of maintaining an outside contractor's office, we believe where 40 or more hours of service are provided per therapist, the contracted services are being delivered in the same manner as a full-time salaried employee. We invite comments on this proposal.

5. Outcomes Based Systems

We have received several comments requesting that the guidelines not restrict differential therapy services (for example, ''full-service'' programs offering supervision, outcomes measurement, and therapy department support). Those comments have suggested that for example, where providers incur additional costs for outcomes measurement systems where Medicare beneficiaries benefit and thus, the provider incurs less routine costs, the provider should be allowed to claim those additional costs related to the outcomes measurement system. We are aware of no outcomes measurement for therapy services that would permit the adoption of the proposal for differentiated services. However, we invite comments on the development of an outcomes based system.

6. Exception for Binding Contract

Existing regulations at 42 CFR 413.106(f)(1) provide for an exception to the salary equivalency guidelines for a provider that has entered into a written binding contract with a therapist or contracting organization prior to the date the initial guidelines are published. Before the exception is granted, the provider was required to submit the contract to its intermediary, subject to review and approval by the HCFA regional office. The exception may be granted for the contract period, but no longer than 1 year from the date the guidelines for the particular therapy are published. During the period in which a binding contract exception is in effect, the cost of the services is evaluated under the prudent buyer concept. (Section 1414.1 of the Provider Reimbursement Manual contains instructions on this exception.)

We are proposing to eliminate this exception. We believe that providers should have been prudent purchasers of therapy services prior to the establishment of guidelines for speech language pathology and occupational therapy services and, therefore, should not be disadvantaged if contracted speech-language pathology and occupational therapy services are subject to the proposed guideline amounts. We also wish to point out that there has never been an exception for providers who enter into a contingency contract with a therapist or contracting organization and we are not now providing such an exception. In a contingency contract, the provider and contractor agree that, if Medicare does not reimburse the provider for the rate that the contract is set at, the provider and contractor agree that the provider will not be liable for the difference.

7. Exceptions Process for Unique Circumstances or Special Labor Market Conditions

Section 413.106 provides that a provider may request an exception to the established hourly salary equivalency amount for unique circumstances or special labor market conditions. The provider must submit evidence or information to the intermediary, in accordance with instructions issued in § 1414.2 of the Provider Reimbursement Manual, so that the intermediary can make a determination on the request. We invite specific comments on the substantiating documentation requirements and the process used to determine whether a provider would be granted an exception for unique circumstances or special labor market conditions.

8. Time Period for Submission of Exception Requests

We are proposing to revise the time period for a provider to submit a request for an exception to the salary equivalency guidelines for unique circumstances or special labor market conditions, to within 150 days after the close of its cost reporting period. Under existing policy, a provider's request for an exception, together with substantiating documentation, must be submitted to the intermediary no later than 90 days after the close of its cost reporting period. In response to provider claims that 90 days is not long enough for providers to submit cost reports and, as mentioned earlier, we have published final regulations to change the due date for submission of cost reports (60 FR 33137). If the circumstances giving rise to the exception remain unchanged from a prior cost reporting period, however, the provider need only submit evidence to the intermediary 150 days after the close of its cost reporting period to establish that fact.

III. Regulatory Impact

A. Background

For proposed rules such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities. All therapists, however, are treated as small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes

of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and we certify, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

This proposed rule would (1) Revise the methodology for determining salary equivalency guidelines for physical therapy and respiratory therapy services furnished under arrangement; (2) apply the revised methodology for payment of physical therapy and respiratory therapy services to speech language pathology and occupational therapy services; and (3) establish revised schedules of salary equivalency guidelines for physical and respiratory therapy services and initial schedules of salary equivalency guidelines for speech language pathology and occupational therapy services. The proposed guidelines would be used by Medicare fiscal intermediaries to determine the maximum allowable payment for therapy services furnished under arrangements.

As we indicated earlier, the salary equivalency guidelines for physical and respiratory therapy services furnished under arrangements were last revised in 1983, with provisions for yearly adjustments for inflation. In addition, although the law gives us explicit authority to establish salary equivalency guidelines for speech language pathology and occupational therapy services furnished under arrangements, we have never previously done so. We have, instead, paid for these services using reasonable cost methodologies. We now believe that, if we continue to use these methods to pay for speech language pathology and occupational therapy services furnished under arrangements, we would be paying for costs that are in excess of what Congress intended under section 1861(v)(5) of the Act.

Although we expect that the establishment of these proposed revised guidelines would be beneficial to the Medicare program as well as to Medicare beneficiaries, we recognize that a large number of small entities, such as suppliers of rehabilitation therapy services, would be affected by these proposed revised guidelines, and a substantial number of these entities may be required to make changes in their operations. This analysis, in combination with the remainder of this preamble, is consistent with the standards for analysis set forth by the RFA.

B. Anticipated Effects

1. Effects on the Medicare Trust Funds

The proposed guidelines are based upon a provider's reasonable cost for an employee therapist furnishing therapy services. This cost includes the prevailing salary levels for therapists, prevailing market area fringe benefits, as well as a share of the other expenses that could be attributed to an employee therapist. The estimated savings to the Medicare Trust Funds result from the differences in the proposed guidelines relative to current rates of payment after behavioral offsets for increased add-ons, volume, intensity, mix of services and other revenue enhancement behaviors have occurred.

Although we were confronted with limited available data on the effect of the proposed guidelines on the Medicare Trust Funds, we developed an estimate of that effect. A detailed paper on the methodology of the impact analysis is available to interested parties upon request. We had limited data sources with which to develop hourly salary rates and other expense factors and to develop a projection of the effect of the proposed guidelines on the Medicare Trust Funds for proposed versus current levels. We are limited because the Medicare cost reports and claims data do not furnish us with data on hourly rates paid to therapists and other relevant expense and net revenue data. So, we based the hourly salary rates and the effect of the proposed guidelines on the Medicare Trust Funds on the best data available to us from HCFA sources and the therapy industry. The hourly salary rates were based on a blend of hospital and SNF survey data sources and the impact analysis was based on billing data from HCFA's Decision Support Access Facility (DSAF) files and SNF cost report data from the Hospital Cost Reporting Information System file as well as industry sources. We invite comments on other data sources that may be used.

Based upon various data sources for 1993, 1994, and 1995 we formed a base line for purposes of projecting volume of services in future years for each of the four therapy types. For each therapy type, we then found the difference between the current rate and the proposed rate, multiplied that difference by the projected volume in order to estimate the savings or additional outlays that this proposed rule would have.

When trend factors from the DRI/McGraw Hill third quarter 1996 forecast of the HCFA rehabilitation therapist input price index are used, we estimate the proposed guidelines for April 1997 will increase the current national or aggregate guidelines per hour for physical therapy by 30.5 percent and the national or aggregate guidelines for respiratory therapy by 8.1 percent. At the same time, the proposed guidelines for occupational therapy and speech-language pathology will decrease estimated current aggregate rates by 42.7 percent and 28.1 percent, respectively.

Our projected savings per year are based on the difference between current and proposed total costs after a standard behavioral adjustment is applied for lower proposed prices relative to current payments under current payment rules.

We followed the Office of the Actuary (OACT) standard practice of allowing an offset of 35–50 percent for behavioral changes when we estimated the proposed savings resulting from lowered prices. In recent years suppliers of therapy services have bundled physical therapy, occupational therapy, and speech language pathology (but not respiratory therapy) when they have contracted to furnish therapy services to SNFs. The 35 percent behavioral offset allows for changes in behavior that generate increased revenue to the suppliers at the lower average price for the bundle of services. The behavioral offset was not applied to respiratory therapy services because proposed prices are higher than current regulation prices and the respiratory therapy industry contracts separately with the SNF industry. We chose the lower end of the range because services are provided in the facility based on time in facility, not fee for service, thus there are substantially fewer opportunities for revenue enhancing behavior. Suppliers are estimated to compensate for about one third of the reduction in prices by a combination of increased add-ons, volume, intensity, change in mix, and a shift in the site of service or a change in options for reimbursement. Suppliers might shift from being suppliers where payment is controlled by salary equivalency guidelines to being providers where payment is on a reasonable cost basis not subject to guidelines (unless as providers they also contract for therapy services); or they may increase the volume of services in physical therapy where guideline amounts are higher; or they may use less experienced and therefore lower salaried therapists. Other revenue enhancement practices may emerge which cannot be fully anticipated. Using this offset, the 4½ year impact of the proposed guidelines for 1997

through 2001 for therapy services under arrangements is estimated to be a savings of $1,250 million for Medicare Part A and $410 million for Medicare Part B.

When the 4½ year impact analysis methodology and the expected percentage increase in Medicare enrollees per year (from 2002 to 2006) are used to estimate the increased volume of rehabilitation therapy services for 2002 to 2006, the impact on outlays over 9½ years is a savings of $2,920 million for Medicare Part A and $980 million for Medicare Part B.

For a 9½ year impact, the expected percentage increase in Medicare enrollees for 2002–2006 was used in part to compute estimated volume of services. The results were then multiplied by the estimated current and proposed guidelines, which had been estimated by extending the current guidelines by their inflation methods and the proposed guidelines by their proposed inflation method. Estimated outlays for each year under current and proposed guideline amounts were calculated. Again a 35-percent behavioral offset was applied to the aggregate savings for physical therapy, occupational therapy, and speech language pathology services, and the resultant outlay savings calculated. The results using the proposed guideline amounts were additional estimated savings. When combined with the 4½ year total impact shown above, the estimated 9½ year savings total is $2,920 million for Medicare Part A and $980 million for Medicare Part B.

Our projected outlays under current guidelines, under the proposed guidelines, and the difference between the two sets for fiscal year 1997 through fiscal year 2001 are as follows:

SALARY EQUIVALENCY: OUTLAYS AND SAVINGS ESTIMATES—PARTS A AND B

Federal fiscal year	Estimated outlays			Estimated savings after offset (in millions, rounded)	Coinsurance (in millions, rounded)
	Under current regulations before offset (in millions)	Under proposed regulations			
		Before offset (in millions)	After offset of 35 percent (in millions)		
1997	$1,790	$1,530	$1,630	$140	$20
1998	3,900	3,310	3,530	340	30
1999	4,230	3,560	3,810	380	40
2000	4,420	3,730	3,990	390	40
2001	4,620	3,900	4,170	410	40
2002	4,830	4,080	4,360	430	40
2003	5,040	4,270	4,560	440	40
2004	5,260	4,480	4,770	450	40
2005	5,490	4,690	4,990	460	40
2006	5,740	4,930	5,240	460	40
Totals	45,320	38,480	41,050	3900	370

The budget outlays and savings include coinsurance and are before the Part B premium offset.

This applies the 35 percent offset to physical therapy, occupational therapy, and speech-language pathology only and no offset to respiratory therapy.

Estimates are based on an illustrative effective date of April 1, 1997.

SALARY EQUIVALENCY: OUTLAYS AND SAVINGS ESTIMATES [1]—PART A

Federal fiscal year	Estimated outlays			Estimated savings (in millions, rounded)
	Under current regulations before offset (in millions)	Under proposed regulations		
		Before offset (in millions)	After offset of 35 percent (in millions) [2]	
1997	$1,370	$1,200	$1,270	$100
1998	2,990	2,590	2,740	250
1999	3,250	2,780	2,960	290
2000	3,400	2,910	3,100	300
2001	3,550	3,050	3,240	310
2002	3,710	3,190	3,390	320
2003	3,870	3,330	3,540	330
2004	4,040	3,490	3,700	340
2005	4,210	3,660	3,870	340
2006	4,410	3,850	4,070	340
Totals	34,800	30,050	31,880	2,920

[1] Estimates are based on an illustrative effective date of April 1, 1997.

[2] This applies the 35 percent offset to physical therapy, occupational therapy, and speech-language pathology only and no offset to respiratory therapy.

SALARY EQUIVALENCY: OUTLAYS AND SAVINGS ESTIMATES [1]—PART B

Federal fiscal year	Estimated outlays [2]				
	Under current regulations before offset (in millions)	Under proposed regulations		Estimated savings (in millions, rounded)	Coinsurance (in millions, rounded)
		Before offset (in millions)	After offset of 35 percent (in millions) [3]		
1997	$420	$330	$360	$40	$20
1998	910	720	790	90	30
1999	980	780	850	90	40
2000	1,020	820	890	90	40
2001	1,070	850	930	100	40
2002	1,120	890	970	110	40
2003	1,170	940	1,020	110	40
2004	1,220	990	1,070	110	40
2005	1,280	1,030	1,120	120	40
2006	1,330	1,080	1,170	120	40
Totals	10,520	8,430	9,170	980	370

[1] Estimates are based on an illustrative effective date of April 1, 1997.
[2] The budget outlays and savings include coinsurance and are before the Part B premium offset.
[3] This applies the 35 percent offset to physical therapy, occupational therapy, and speech-language pathology only and no offset to respiratory therapy.

2. Effects on Providers

We expect that the proposed salary equivalency guidelines will provide adequate payments for all classes of efficient providers. It is possible that certain inefficient therapy suppliers may be unwilling to contract with providers at the proposed salary equivalency rates, expanding the market for more efficient therapy suppliers. We also understand that certain therapy suppliers were requiring providers to purchase a bundled package of physical therapy, occupational therapy, and speech-language pathology services. By requiring this bundling of services, suppliers were able to make substantial profits because, even though there was an hourly payment limit on the physical therapy services, there were no guidelines for the speech-language pathology and occupational therapy services. Consequently, the suppliers marked up the speech-language pathology and occupational therapy services. Our proposed guidelines for speech-language pathology and occupational therapy services may eliminate suppliers profiting from excessively high prices for occupational therapy and speech language pathology. We expect that providers will continue to provide therapy services at the proposed published rates. We expect that providers will be able to furnish the same array of beneficiary services they furnish under current guidelines amounts or payment on a reasonable cost basis.

3. Effects on Beneficiaries

We believe that the impact of the proposed guidelines on Medicare beneficiaries will be minimal. Beneficiaries may be slightly affected by the proposed guidelines for physical therapy, speech language pathology, and occupational therapy services. With respect to physical therapy services, the Medicare Part B coinsurance amounts associated with these services, that must be paid by beneficiaries (20 percent of the provider's charges to the beneficiary) may increase if providers increase charges for those services. The charges may increase because physical therapy hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this proposed rule over the previous schedules of guidelines. However, the Medicare program does not dictate a provider's charge structure. We do expect charges to be reasonably related to cost. Conversely, beneficiary coinsurance would be reduced for speech language pathology and occupational therapy services because Medicare payment rates for these services would be reduced by the establishment of guidelines in this proposed notice and the provider's charges to the beneficiary may also decrease. Because respiratory therapy provided in comprehensive outpatient rehabilitation facilities under arrangements is a Part B service, Medicare Part B coinsurance amounts related to those services that must be paid by beneficiaries may increase if providers increase charges for those services. This may also occur because respiratory therapy hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this proposed notice over the previous schedules of guidelines. We believe that our proposed guideline amounts are adequate so that therapy suppliers should continue to contract with providers to furnish services to beneficiaries. Since we are now introducing proposed guideline amounts for occupational therapy and speech language pathology, if providers are passing along the therapy companies higher charges, then we would expect providers' charges may be lower for those services.

4. Effects on Therapists and Therapist Companies

The proposed salary equivalency guidelines would have varying impacts on the four categories of therapists. Speech language pathologists and occupational therapists working for contract suppliers should be minimally affected, since the suppliers typically bundle all therapy services when negotiating rates (including overhead) with providers. Physical therapists acting as suppliers or employed by supplying therapy companies may be affected positively because physical therapy hourly rates recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this proposed notice and, therefore, providers may contract with physical therapists at a higher amount. Also, providers may contract with therapy companies at a higher amount and they, in turn, may pay the therapists higher salaries. Similarly, respiratory therapists acting as therapy suppliers or employed by therapy suppliers may be positively affected because respiratory therapy

hourly amounts recognized by Medicare fiscal intermediaries to determine the maximum allowable cost of those services will increase in this proposed notice and, therefore, providers may contract with respiratory therapy suppliers at a higher amount. Also providers may contract with therapy companies at a higher amount and they, in turn, may pay the therapists higher salaries.

We recognize that a large percentage of providers have contracts with therapy companies that may dominate a market area. We understand that because the contracted physical therapy services have been limited by the guidelines, some of these therapy companies have been requiring providers to sign up for three therapy services, that is, physical, occupational and speech-language pathology services, but were overcharging providers for speech-language pathology and occupational therapy services. These therapy companies may incorrectly claim that the introduction of our proposed guidelines for contracted speech-language pathology and occupational therapy services may put them out of business. Our rates are designed to reflect adequate rates for all classes of efficient suppliers. Even though we do not pay contracted therapy companies directly, unless they also act as providers, and (with the exception of independent physical therapists and occupational therapists) contracted therapy services are one of the few Medicare services that have not been targeted in earlier deficit reduction laws.

Other changes in behavior might include a change in the type of therapy offered (perhaps substituting physical therapy for occupational therapy and increasing the volume of services furnished in physical therapy, which has a higher guideline amount), use by suppliers of less experienced (and therefore lower salaried) therapists, a shift by suppliers from furnishing therapy services under arrangements to furnishing therapy services under agreement, in which the therapy company bills Medicare directly as a provider under Part B. In the latter case, the providers are paid under Part B on a reasonable cost basis and are not subject to salary equivalency guidelines unless they contract for therapy services.

Inefficiently run rehabilitation therapy companies may cut expenses and become more efficient, as is happening in much of the rest of the economy. More efficient companies may expand or enter the market, picking up the therapy services volume which less efficient suppliers may leave unserved. Therapists'' productivity could increase. Overhead is a likely candidate for expense reduction. In addition, profit margins may be reduced, but still be at or above competitive rates for efficient firms. Individual therapy suppliers may already have lower overhead than corporate suppliers. Multi-therapy companies may adjust their service mix away from therapy types for which they are inefficient producers and expand the therapy types for which they are efficient producers.

Due to the proposed salary equivalency guidelines, some therapists who work for inefficient rehabilitation therapy suppliers may have compensation levels above competitive rates and may find that their yearly salary and fringe benefit increases lag those of therapists employed in other more competitive settings of the local therapist labor market. A deceleration in wage increases for workers with excessively high compensation levels will continue until wages in various settings, after compensating non-wage differences, are roughly comparable for each therapy type. Those therapists whose employers curtail furnishing services under arrangements with providers may either furnish therapy for those same employers as employees of rehabilitation agencies that will bill Medicare directly as providers, change employers to those efficiently run companies that expand their contracted therapy services, or become self-employed and contract directly with providers to furnish therapy services under arrangements. Therapists who are employed by efficient rehabilitation therapy suppliers where salaries are in line with those of other therapists (after adjustments for compensating non-wage differentials) in the local labor market should notice no substantial effect. The expected effects described above result in a better functioning, more efficient health care system.

C. Alternatives Considered

Section 1861(v)(5) of the Act requires us to determine the reasonable cost of services furnished to Medicare beneficiaries ''under an arrangement'' with a provider of services, by therapists or other health-related personnel. Other alternatives to implementing the salary equivalency program are to continue paying for therapy services furnished under arrangements using current reasonable cost methodologies or to use alternative data sources to establish the proposed salary equivalency guidelines.

We rejected the first alternative because, if we continue to pay for speech language pathology and occupational therapy services furnished under arrangements using reasonable cost methodologies, we will be paying for costs that are in excess of what Congress intended under section 1861(v)(5) of the Act, to the detriment of the Medicare Trust Funds. In the case of physical therapy and respiratory therapy services, current salary equivalency guidelines may reflect less than a provider's reasonable costs in furnishing these services.

As we indicated in our discussion of data sources we used to establish the proposed guidelines (see section II.A. of this proposed rule), we were unable to find a sole or primary source of data on hourly rates paid to therapists by providers that is timely and statistically valid. Because the BLS hospital wage industry surveys were not timely, we were unable to use that data as our sole source as in prior guideline notices. The rehabilitation therapy industry has submitted survey data to HCFA that they believe support higher guideline amounts than are proposed in this proposed rule. Although the survey data was submitted to us to determine its appropriateness for use in determining new guideline amounts as provided in 42 CFR 413.106(b)(6), it did not meet the requirements in those regulations, but we nevertheless evaluated the data. As indicated in Section II.A. of this preamble, because we were unable to find a sole or primary source that met our criteria of reliability, validity, and representativeness, we decided to blend selected hospital and SNF data sources so that the wages and salary parts of our proposed rule have been determined using a ''best estimate'' approach, giving equal weight to each data source, but preferential status to none.

D. Conclusion

Federal Medicare expenditures have grown at an extraordinary rate in recent years. A study commissioned by the National Association for Support of Long-Term Care indicates that 75 percent of all therapy services under arrangements were furnished in SNFs. We also project that the 65 and over population will nearly double by the year 2025. We believe that the salary equivalency guidelines proposed in this rule are in the public interest since they balance the needs of Medicare program beneficiaries, (taxpayers), providers of therapy services, and suppliers who furnish therapy services under arrangements. Nevertheless, we solicit public comments as well as acceptable data on the extent to which any of the affected entities would be significantly economically affected by these guidelines.

We are not preparing a rural impact analysis since we have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order l2866, this proposed rule was reviewed by the Office of Management and Budget.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the ''Dates'' section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble of the final rule.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule contains a collection of information requirement that would be subject to OMB review and approval. Section 413.106(e) requires a provider of therapy services to supply its intermediary with documentation that supports additional costs incurred for services furnished by an outside supplier. Under § 413.106(f), before an exception to the application of the guidelines may be granted, the provider must submit appropriate evidence, in accordance with instructions issued in section 1414 of the Provider Reimbursement Manual, to its intermediary to substantiate its claim.

Public reporting burden for this collection of information is estimated to be 10 providers at 15 minutes each to prepare and submit to the intermediary documentation that supports the additional costs. We estimate that 10 providers will request an exception. It will take intermediaries 2 hours to process each request. The total public burden is 22½ hours.

This collection of information request is not effective until it has been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on this requirement should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 would be amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C 1302, 1395x(v)(1)(A), and 1395hh).

2. In § 413.106, paragraph (c)(5) is redesignated as paragraph (c)(6) and republished, a new paragraph (c)(5) is added, paragraph (f)(1) is removed and paragraphs (f) (2), (3), and (4) are redesignated as (f) (1), (2), and (3) and republished, to read as follows:

§ 413.106 Reasonable cost of physical and other therapy services furnished under arrangements.

* * * * *

(c) Application. * * *

(5) If therapy services are performed in situations where compensation to a therapist employed by the provider is based, at least in part, on a fee-for-service or on a percentage of income (or commission), the guidelines will apply. The entire compensation will be subject to the guidelines in cases where the nature of the arrangements is most like an under ''arrangement'' situation, although technically the provider may treat the therapists as employees. The intent of this section is to prevent an employment relationship from being used to circumvent the guidelines.

(6) These provisions are applicable to individual therapy services or disciplines by means of separate guidelines by geographical area and apply to costs incurred after issuance of the guidelines but no earlier than the beginning of the provider's cost reporting period described in paragraph (a) of this section. Until a guideline is issued for a specific therapy or discipline, costs are evaluated so that such costs do not exceed what a prudent and cost-conscious buyer would pay for the given service.

* * * * *

(f) *Exceptions:* The following exceptions may be granted but only upon the provider's demonstration that the conditions indicated are present:

(1) *Exception because of unique circumstances or special labor market conditions.* An exception may be granted under this section by the intermediary if a provider demonstrates that the costs for therapy services established by the guideline amounts are inappropriate to a particular provider because of some unique circumstances or special labor market conditions in the area. The provider's request for an exception, together with substantiating documentation, must be submitted to the intermediary each year, no later than 150 days after the close of the provider's cost reporting period. If the circumstances giving rise to the exception remain unchanged from a prior cost reporting period, however, the provider need only submit evidence of the intermediary 150 days after the close of its cost reporting period to establish that fact.

(2) *Exception for services furnished by risk-basis HMO providers.* For special rules concerning services furnished to an HMO's enrollees who are Medicare beneficiaries by a provider owned or operated by a risk-basis HMO (see § 417.201(b) of this chapter) or related to a risk-basis HMO by common ownership or control (see § 417.205(c) of this chapter).

(3) *Exception for inpatient hospital services.* Effective with cost reporting periods beginning on or after October 1, 1983, the costs of therapy services furnished under arrangements to a hospital inpatient are excepted from the guidelines issued under this section if such costs are subject to the provisions of § 413.40 or part 412 of this chapter. The intermediary will grant the exception without request from the provider.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital

Insurance Program and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 8, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: January 13, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–7477 Filed 3–26–97; 2:28 pm]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 62, No. 60
Friday, March 28, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–96–06]

Amplified Decision Regarding the Northeast Interstate Dairy Compact

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This notice announces the Secretary of Agriculture's amplified decision concerning whether a compelling public interest exists in the Northeast Interstate Dairy Compact Region, and whether implementation of the Compact should be authorized. After review of the record, the Secretary finds that a compelling public interest exists in the Compact region and continues to authorize its implementation. The Compact region consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

EFFECTIVE DATE: March 20, 1997.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Director, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 720–4392.

PRIOR DOCUMENTS: *Notice Requesting Comments on the Northeast Interstate Dairy Compact:* Issued April 30, 1996; published May 3, 1996 (61 FR 19904).

Notice of Findings and Authority to Implement the Northeast Interstate Dairy Compact: Issued August 22, 1996; published August 28, 1996 (61 FR 44290).

SUPPLEMENTARY INFORMATION: Section 147 of the 1996 Federal Agriculture Improvement and Reform (FAIR) Act (Pub. L. 104–127) establishes Congressional consent for the Northeast Interstate Dairy Compact (the Compact) entered into by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont subject to several conditions. The FAIR Act provides that ''Based upon a finding by the Secretary of a compelling public interest in the Compact region, the Secretary may grant the States that have ratified the Northeast Interstate Dairy Compact, as of the date of enactment of this title, the authority to implement the Northeast Interstate Dairy Compact.'' On August 8, 1996, the Secretary issued a Finding of a compelling public interest and authorized the Northeast Interstate Diary Compact.

In complying with a court order, the Secretary on March 20, 1997, issued the following amplified decision concerning his finding that a compelling public interest exists in the Compact Region:

Decision of Secretary Dan Glickman on the Northeast Interstate Dairy Compact

On August 9, 1996, I issued a statement on the Northeast Interstate Dairy Compact (the Compact) in which I found a compelling public interest in the Compact region and authorized implementation of the Compact. Given my concerns about the possible adverse effects of the Compact, I expressed my expectation that the Compact Commission (the Commission) would implement and administer the Compact in a way that would prevent such effects. I indicated my intention to monitor the Commission's implementation of the Compact and to take such steps as necessary, including revocation of my authorization to implement the Compact, if conditions warranted such remedial action.

That decision was challenged by the Milk Industry Foundation in Federal district court for the District of Columbia. In a December 11, 1996, decision denying the plaintiff's request for a preliminary injunction, the court found that my decision failed to explain adequately the basis of the finding that a compelling public interest exists in the Compact region. The court also expressed its view that I lacked the authority to revoke my authorization to implement the Compact.

The Department of Agriculture (the Department) subsequently requested that the court stay further proceedings in the case to allow me to amplify my earlier decision. On February 3, 1997, the court issued an order allowing me 45 days to issue a decision and instructed the Department not to prejudge the outcome of its review or be bound by any prior determinations in this matter.

Following the court's order, the Department reevaluated the record, including comments received in response to a *Federal Register* notice the Department published on May 3, 1996, seeking public comments on the Compact from interested parties. This decision is the outcome of that process.

The evidence in the record regarding the economic condition of dairy farmers in the Compact region is mixed. Many commenters who support the Compact argued that the Compact is necessary to maintain viable dairy industry in the Compact region. Some commenters also asserted that the Compact is essential to the continued health of the regional economy. They noted that the dairy industry annually contributes $1.7 billion to the region's economy, and stated that, in Vermont, it represents 70 percent of that state's agricultural economy. They also argued that dairy farmers in the Compact region are going out of business and that they receive lower prices than dairy farmers in other areas of the country.

Commenters who opposed the Compact argued that the decline in the number of dairy farmers in the Compact region has been less than the national average. They also argued that milk prices in the Compact region are more favorable to dairy producers than prices in other regions of the country, and that the Compact is not warranted by supply and demand conditions or any other pertinent economic factors.

The Department's analysis shows that farm-gate milk prices in the Compact region, adjusted for hauling, other charges, and premiums, as well as net returns, average below what producers in many other regions of the country receive. On the other hand, the decline in the number of dairy producers in the Compact region in recent years has been less than the national average. A review of milk production since 1990 indicates that the Compact region has maintained its share of U.S. milk production, even though its dairy producers have not grown in size as fast as producers elsewhere.

One of the primary objectives of the Compact is to help maintain the viability of family-sized dairy farms in the Compact region during the transition period from the current milk marketing order regime to a reformed order system mandated by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Farm Bill). The higher milk prices that would likely result from the Compact would increase the profitability of dairy farming and, in the short term, reduce some of the financial pressure on dairy producers in the Compact region. Thus, while these higher prices may not alter the long-term trend toward larger and probably fewer dairy operations, because all producers would benefit in direct proportion to their size, the higher returns would, I am convinced, provide a short-term benefit to small dairy producers.

I believe that it is important to take reasonable measures to preserve small family farms, and I believe that most Americans, if asked, would agree with this goal. The ideals of family farmers, such as self-sufficiency, independence, and working in balance with nature, are deeply rooted in American history and culture. Regrettably, however, the number of small farms has steadily declined over the years.

To some, the consolidation of agriculture is a benign phenomenon that simply reflects the efforts of farmers expanding their operations to become more efficient and more economically viable. To others, however, the decline in number and increase in size of farm operations reflect a disruption of rural communities and an undesirable concentration of economic power in the hands of fewer producers, presaging the eventual demise of small, independent family farmers.

None of us involved in agricultural policy has at hand a set of easy answers to these vexing questions. During the same time that significant structural changes in the American agricultural system have occurred, the system has continued to produce the safest, most abundant and most affordable food supply in the world. But I do not believe that maintaining this food supply means that agricultural production should or must be dominated by large producers. America wants and still needs the family farm.

This belief is obviously strongly held by the people of the Compact region. Numerous commenters argued that small dairy farms are an important part of the character and culture of their communities, and they have united to take steps to preserve these farms by approving the Compact. Commenters also noted that the success of the Compact would help to limit the continued conversion of farmland to non-farm uses which threatens the unique characteristics of New England rural scenery.

I am convinced that small dairy farms are an essential part of the character and culture in the Compact region. These farms preserve open spaces, sculpt the landscape, and provide the land base for a wide diversity of recreational pursuits. There is clearly widespread support throughout the Compact region to help prevent additional dairy farmers from going out of business. I believe that the Compact represents a cooperative effort by consumers, processors, and government representatives that will help address this concern during the transition to a reform milk marketing order system as mandated by the 1996 Farm Bill.

However, I also share with all Americans a commitment to helping those who are less fortunate. In fact, some commenters opposed the Compact because it could have adverse effects on low-income people and could increase the costs of government food assistance programs. Indeed, in my earlier decision, I specifically raised, concerns about the effect of the Compact on consumers, particularly low-income families, in the Compact region.

I sought to address those concerns by laying out my expectations regarding implementation of the Compact, particularly my insistence that the Commission provide assistance to offset any increased burden on low income families in the Compact region. I also insisted that the Commission exercise its authority to reimburse participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and fulfill its obligation to reimburse the Commodity Credit Corporation (CCC) for purchases under the dairy price support program, if warranted. At the time I authorized the Compact, I indicated clearly that I would closely monitor Compact implementation. More importantly, I stated that, if conditions indicated that a compelling public interest in the region no longer existed, I would revoke my authorization.

I continue to be concerned about the potential effect that imprudent Compact implementation may have on low-income families in the Compact region and it would be wrong for me to ignore this issue. Assisting dairy farmers in the Compact region should not and need not come at the expense of low-income people in the region.

I also expressed concerns about the potential adverse effect of the Compact on other dairy-producing regions, concerns which were shared by a number of commenters opposed to the Compact. However, the Department's analysis concludes that milk production in the Compact region is a small percentage of overall national production, and that potential adverse effects on milk prices outside the Compact region, if any, are likely to be very small. The Department has concluded that the Compact can be implemented so that it does not measurably affect milk prices in other dairy producing regions.

Commenters opposed to the Compact also argued that it represents a form of regional protectionism inconsistent with the more market-oriented direction of other Federal farm policies and inconsistent with the current milk marketing order structure. However, while the Compact may not move in the direction of some other Federal farm policies, it is consistent with efforts to encourage more regional and local responsibility for issues previously addressed at the Federal level.

In addition, the Compact is a short-term measure specifically confined by statute to the transitional period during which the Department will be moving to reform and restructure milk marketing orders through a rulemaking process. The Department began this process last summer and is firmly committed to meeting the deadline of April 4, 1999, contained in the 1996 Farm Bill. For example, on March 7, 1997, the Department released for public comment several proposals regarding the fluid milk pricing and other key provisions of milk marketing orders, and additional proposals will be issued in the near future.

Dairy policy is one of the most complex areas of Federal agricultural policy. Changes are regularly made to Federal policies and programs to ensure that they reflect the latest developments and appropriately balance all of the various factors that must be considered. The Compact can and should be implemented with flexibility and careful planning. Implementation that fails to reflect the changing supply, demand, price and competitive nature of the dairy industry would not be in the public interest.

The Congress left to the Department's expertise and discretion the determination of what might constitute a compelling public interest in the Compact region. The Department has concluded that such a finding and authorization to implement the Compact cannot be viewed as a one time event based on a single snapshot in time. Rather, the Department strongly believes that the assessment of a compelling public interest in the Compact region may well change over time.

This Compact creates a policy-setting Commission whose authorities are not merely ministerial. Compact implementation is a dynamic, on-going process, and the Commission will function in a constantly changing economic and sociological environment. It is impossible to foresee how the Commission will exercise its power carrying out its broad responsibilities, or to predict how conditions in the Compact region will evolve. Facts and circumstances that may currently justify authorization may subsequently change to the extent that a compelling public interest no longer exists in the Compact region.

Given the shifting nature of the compelling public interest test, the Department strongly believes that the authority to withdraw or revoke its authorization is an essential element of any decision which finds that a compelling public interest exists. While the Department recognizes the court's view that I do not have the authority to revoke authorization to implement the Compact, this issue was neither thoroughly briefed nor argued to the court, and the Department respectfully disagrees.

For the foregoing reasons, I find that there is a compelling public interest in the Compact region and authorize implementation of the Northeast Interstate Dairy Compact. In authorizing the Compact's implementation, I have concluded that the balance has been properly struck, given current conditions. The Compact is a short-term measure that, if implemented with common-sense and sensitivity to the needs of all affected persons and interests, can benefit the dairy producers and all citizens in the Compact region without producing adverse side effects.

I recognize, however, that balancing all of the factors involved here may not be an easy task for the Commission. Therefore, the Department is ready to assist the Commission in implementing the Compact to achieve these goals. In addition, I encourage the elected officials of the Compact region to work with the Commission to ensure that low income people, the American taxpayers, and other U.S. dairy producers are not adversely affected by the implementation of the Compact.

To ensure successful implementation of the Compact in accordance with my decision, the Department will continue to monitor the Commission and will take all necessary steps within its authority, including revocation, to achieve these objectives. Additionally, as the court observed, the Department may raise concerns regarding the operation of the Commission with Congress and, if necessary, request that it revoke its consent to the Compact.

Dated: March 24, 1997.

Shirley D. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–7865 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Extension of Currently Approved Information Collection for Senior Community Service Employment Program (SCSEP) Application

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to request an extension of a currently approved information collection. Under the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*) the Forest Service cooperates with the Department of Labor to provide part-time training and employment opportunities, for economically disadvantaged persons aged 55 or older, through the Department of Labor Senior Community Service Employment Program (SCSEP). As part of this effort, the Forest Service collects information from applicants in order to evaluate their eligibility for employment with the agency through the Program.

DATES: Comments must be received in writing on or before May 27, 1997.

ADDRESSES: All comments should be addressed to: Director, Human Resource Programs (MAIL STOP 1136), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Priscella McCray, Human Resource Programs Staff, at (703) 235–8860.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: FS–1800–21b Application for the Senior Community Service Employment Program.

OMB Number: 0596–0099.

Expiration Date of Approval: June 30, 1997.

Type of Request: Extension of a previously approved information collection.

Abstract: Under the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*) the Forest Service cooperates with the Department of Labor to provide part-time training and employment opportunities, for economically disadvantaged persons aged 55 or older, through the Department of Labor Senior Community Service Employment Program (SCSEP). The Department of Labor is the grantor for the Senior Community Service Employment Program and provides the guidelines for the program's operation, which runs July 1 through June 30.

Applicants seeking training and employment with the Forest Service through this program use the FS–1800–21b Application for the Senior Community Service Employment Program Form. The applicants respond to questions requesting their name, age, annual income, State of residence, gender, education level, ethnic group, veteran's status, disability status, and English-speaking status. The Form becomes part of the applicant's official personnel folder.

The Forest Service uses the information to determine the applicant's eligibility for the program, to re-certify their eligibility on an annual basis, and to prepare quarterly progress reports, which highlight the agency's program accomplishments and demographic efforts. The Forest Service submits the reports to the Department of Labor on a quarterly basis.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 10 minutes.

Type of Respondents: Economically disadvantaged individuals, including legal aliens, over age 55.

Estimated Number of Respondents: 6,500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,083 hours.

The agency invites comments on the following: (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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Dated: March 21, 1997.

Barbara C. Weber,

Acting Chief.

[FR Doc. 97–7956 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–11–P

Liberty Forest Health Improvement Project, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Tahoe National Forest will prepare an environmental impact statement (EIS) for a proposed forest health improvement project within the boundaries of the Liberty Analysis Area. This area is identified by watershed boundaries that encompass about 12,769 total acres. The analysis area is located on the Sierraville Ranger District and is about eight miles south and east of Sierraville, California. It is located within all or portions of T18N and T19N, R14E and R15E, MDB&M.

The primary objectives of the project are to improve the forest health and to reduce the risk of stand-destroying fires by treating about 3,100 acres within the analysis area. The project proposal focuses on reducing stocking levels of existing weakened and overcrowded stands that are mixed with dead and dying trees. The trees to be removed are relatively small second-growth, evenaged timber, averaging 10 inches to 18 inches in diameter, 50 to 90 feet tall, and 80 to 110 years old.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by April 23, 1997.

ADDRESSES: Written comments concerning the project should be directed to Sam Wilbanks, District Ranger, Sierraville Ranger District, P.O. Box 95, Sierraville, CA 96126.

FOR FURTHER INFORMATION CONTACT: Sam Wilbanks, District Ranger, Sierraville Ranger District, Sierraville, CA 96126, telephone (916) 994–3401, or Phil Horning, Project Team Leader, at (916) 478–6210.

SUPPLEMENTARY INFORMATION: The Liberty analysis area is mixed ownership with about 8,262 acres of National Forest System lands and 4,507 acres of lands of other ownerships that are located in the upper reaches of the Little Truckee River watershed, a tributary to the Truckee River. Most of the area is accessible by either National Forest or County roads; however, about

1.8 miles of new road construction and 4.5 miles of temporary construction are proposed. The 3,100 acres of proposed activities are located in the eastern two-thirds of the analysis area, primarily west of State Highway 89 and south of Fiberboard road.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives that address the issues developed for this area. One of the alternatives will be no treatment. Other alternatives will consider differing levels of implementation of commercial timber stand thinning treatments, fuels reduction, pre-commercial thinning in plantations, watershed restoration, road obliteration, wildlife habitat improvement, and new road construction and reconstruction. An ecological approach will be used to achieve multiple-use management of the Liberty Analysis area. It also means that the needs of people and environmental values will be blended in a such way that this area's desired condition would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the draft environmental impact statement. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The following list of issues has been identified through initial scoping:

(1) To what extent can the potential for future large, catastrophic wildfires be reduced within the project area?

(2) To what extent can the forest health be restored within the project area?

(3) What level of timber commodities could be removed economically from the forest health restoration projects?

(4) To what extent will long-term soil productivity be affected by equipment compaction by the proposed activities.

(5) To what extent will water quality in the Truckee River watershed be affected by proposed activities? To what extent will cumulative watershed effects, e.g., channel erosion, stream sedimentation, occur and what opportunities exist to reduce or mitigate these potential effects?

Comments from other Federal, State and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation will be solicited through mailing letters to potentially interested or affected mining claim owners, private land owners, and special use permittees on the Sierraville Ranger District; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. Public meetings, depending on interest, will be used as a method of public involvement during preparation and review of the draft environmental impact statement and will be announced in newspapers of general circulation in the geographic area well in advance of scheduled dates.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1997. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived on dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by August, 1997. The responsible official is John H. Skinner, Forest Supervisor, Tahoe National Forest.

Dated: March 21, 1997.

John H. Skinner,

Forest Supervisor.

[FR Doc. 97–7893 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–11–M

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, April 17, 1997. The meeting will be held at the Mt. Hood National Forest Supervisor's Office; 16400 Champion Way; Sandy, Oregon 97055; phone (503) 688–1700. The meeting is scheduled to begin at 9:00 a.m. and conclude at approximately 12:30 p.m. Topics tentatively scheduled on the agenda include: (1) A panel addressing recreation, tourism issues related to the Northwest Forest Plan; (2) A PAC discussion of recreation related issues; (3) Brief updates on the status of proposals from the February PAC meeting (Monitoring and Little Sandy Watershed Subcommittees); and (4) Roundtable Information Sharing.

The meeting is open to the public and opportunity will be available to address the Advisory Committee during the public forum. The public forum is tentatively scheduled for 10:30 a.m. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT:

For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: March 24, 1997.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 97–7907 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 28, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Bath Puff
M.R. 566
NPA: Mississippi Industries for the Blind, Jackson, Mississippi

Scourer, Copper
M.R. 505
NPA: Lighthouse for the Blind of the Palm Beaches, Inc., West Palm Beach, Florida

Towels, Seasonal
M.R. 1009
NPA: Chester County Branch of the PAB, Coatesville, Pennsylvania

Business Cards
7510–00–NIB–0240 (1000 to box)
7510–00–NIB–0265 (500 to box)
7510–00–NIB–0266 (250 to box)
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington

Folder, File
7530–01–364–9482
7530–01–364–9483
7530–01–364–9484
7530–01–364–9485
7530–01–364–9486
7530–01–364–9503
7530–01–364–9504
7530–01–364–9505
7530–01–364–9506
NPA: Lions Club Industries, Inc., Durham, North Carolina

Service

Janitorial/Custodial
Mare Island Naval Shipyard
Vallejo, California
NPA: V-Bar Enterprises, Inc., Suisun City, California

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 97–7928 Filed 3–27–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 28, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 22, 1996, January 7, 10, 17, 24, 31 and February 7, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 59401, 62 FR 964, 1429, 2644, 3658, 4721, and 5797) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were: 1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Potpourri
M.R. 400
M.R. 401
M.R. 403

Office and Miscellaneous Supplies

(Requirements for Fort Stewart, Georgia)

Tape, Computer
7045–01–119–6357

Services

Administrative Services, Naval Training Center, Great Lakes, Illinois
Duplicating/Copying of Court Documents, GPO Program C414–S)
Grounds Maintenance, Federal Bureau of Investigation, Criminal Justice Information Services Complex, Clarksburg, West Virginia
Janitorial/Custodial, Major Bias USARC, Huntington, West Virginia
Library Services, Beale Air Force Base, California
Military Dining Facility Attendants, U.S. Coast Guard Station, Miami Beach, Florida
Military Dining Facility Attendants, West Virginia Air National Guard, Charleston, West Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E.R. Alley, Jr,

Deputy Executive Director.

[FR Doc. 97–7929 Filed 3–27–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 28, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 1, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (60 FR 45704) of proposed addition to the Procurement List. Comments were received from the current contractor for the ear plugs and from two offices in one of the using Government agencies. All commenters questioned the ability of the nonprofit agency to produce ear plugs which meet the Government's specifications. The current contractor also questioned the nonprofit agency's ability to meet Government delivery requirements. Initial testing of the nonprofit agency's prototype ear plugs indicated that they did not consistently meet all Government specifications. The nonprofit agency has corrected the deficiencies, and subsequent testing by an independent laboratory has shown that the ear plugs now meet all specification requirements. The Government agency which procures the ear plugs has inspected the nonprofit agency's facility and concluded that it is capable of producing the ear plugs.

The commenting contractor also claimed that if the nonprofit agency produced the earplugs manually they would be contaminated and pose a health risk for users, while if an automated process is used the nonprofit agency would fail to meet the Committee's statutory 75 percent disabled direct labor requirement. The contractor stated that it would not be safe for persons with severe disabilities to use the required automated equipment.

The nonprofit agency will be using an automated process which will avoid direct human contact with the plugs before they are placed in individual packages. This approach will not violate the Committee's statutory requirement, as the 75 percent figure applies only to total direct labor done by a nonprofit agency on all its production activities. The requirement does not apply to direct labor involved in the production of a single commodity for a Government agency. The nonprofit agency has adapted other pieces of industrial equipment, such as stamping presses, for safe use by persons with severe disabilities, and is making similar adaptations to the automated equipment to be used in producing the ear plugs.

The contractor claims that it is the only company which has been able to produce foam which will meet the specification requirements for the ear plugs. The contractor will not sell this foam to the nonprofit agency. However, the nonprofit agency has located a company which can produce foam which conforms to the specifications. The Committee's industrial engineer has visited that company's plant and reviewed the most recent laboratory testing of the ear plugs the nonprofit agency has produced from that foam, and has confirmed that the ear plugs meet all specification requirements. The nonprofit agency has also tested the ear plugs after they have been stored for a period of time and demonstrated that they continue to meet the specification requirements after storage.

The commenting contractor contends the nonprofit agency will not be able to meet the Government's total annual requirements for the ear plugs because it has not made the capital investment necessary to acquire adequate manufacturing equipment and train personnel. The nonprofit agency has arranged the financing needed to acquire equipment and train personnel.

The contractor also contends that the nonprofit agency will not be able to meet Government delivery requirements because the contractor has in the past handled large Government orders with short turnarounds by using stock in its warehouse that was intended for commercial sales, and the nonprofit agency does not have similar commercial sales to create an inventory it can draw upon. The procuring Government agency's finding of nonprofit agency capability, however, includes an allowance for excess orders to meet emergency requirements. Consequently, the Committee believes the nonprofit agency will be able to handle all Government orders for the ear plugs.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Plug, Ear, Hearing Protection
6515–00–137–6345

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 97–7930 Filed 3–27–97; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on April 18, 1997, at the Office of Margo Piscevich, 350 South Center Street, Suite 300, Reno, Nevada 89509. The purpose of the meeting is to discuss civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, 702–329–0958, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 20, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–7896 Filed 3–27–97; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 p.m., on April 23, 1997, at the Westin Hotel, 1900 Fifth Street, Seattle, Washington 98101. The purpose of the meeting is to discuss on-going civil rights concerns and welfare reform monitoring.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson William Wassmuth, 206–233–0611, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 20, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–7897 Filed 3–27–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Calcium Aluminate Flux From France; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On February 4, 1997, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on calcium aluminate flux (CA flux) from France (62 FR 5200). The period of review is June 15, 1994 through May 31, 1995. On February 18, 1997, the sole respondent, Lafarge Aluminates, and its U.S. subsidiary, Lafarge Calcium Aluminates, Inc. (collectively, Lafarge) filed a timely request that the Department correct a ministerial error in these final results. We are publishing this amendment to the final results of review in accordance with 19 CFR 353.28(c).

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3019 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unles otherwise stated, all citations to the Tariff Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

Imports covered by this review are shipments of CA Flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 2523.10.0000. The HTSUS is provided for convenience and U.S. Customs' purposes only. The written description of the scope of this order remains dispositive. This review covers the period June 15, 1994 through May 31, 1995.

Ministerial Error in Final Results of Review

After reviewing Lafarge's allegation of a ministerial error in the Department's final results of CA flux from France, we agree that misplaced parentheses in the computer program resulted in the failure to multiply the per-unit U.S. cost of manufacture (COM) by the quantity when calculating the U.S. cost of goods sold (COGS) to derive profit based on the total costs, total revenues, and total expenses for all subject merchandise during the period of review. The intent of the Department was clearly to include total, not per-unit, revenue, costs and expenses in the profit calculation as we did for revenue, and all components of selling expenses and movement charges. For these amended final results we have multiplied all components of the COGS, including the COM, by the quantity in order to correctly include the total COGS in the calculation of profit.

Amended Final Results of Review

As a result of our correction of a ministerial error, we have determined the margin to be:

Company	Period of review	Margin (percent)
Lafarge Fondu Inter'l, Inc	6/15/94–5/31/95	11.71

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions concerning the respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for Lafarge will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 37.93 percent, the ''all-others'' rate established in the LTFV investigation, 59 FR 5994 (February 9, 1994).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28(c).

Dated: March 20, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7964 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–810]

Stainless Steel Bar From India; Initiation of New Shipper Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received a request to conduct a new shipper administrative review of the antidumping duty order on stainless steel bar from India. In accordance with 19 CFR 353.22(h), we are initiating this administrative review.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Vince Kane, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or 482–2815, respectively.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act'), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a request, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 353.22(h), for a new shipper review of the antidumping duty order on stainless steel bar from India, which has a February anniversary date. One of the requests for a new shipper review did not include the necessary certifications pursuant to 19 CFR 353.22(h)(2). Therefore, on 3/14/97 we requested the appropriate certifications. The certifications were submitted on 3/18/97.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 353.22(h)(6), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. We intend to issue the final results of the review not later than 270 days from the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
India: Stainless Steel Bar, A–533–810:	
Panchmahal Steels, Limited	08/01/96–01/31/97
Ferro Alloys Corporation Limited	08/01/96–01/31/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 353.22(h)(4).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

Dated: March 20, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–7962 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–DS–P

Determination Not To Revoke Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty orders.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its determination not to revoke the countervailing duty orders listed below.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1996, the Department published in the **Federal Register** (61 FR 67321) its intent to revoke the following countervailing duty orders:

COUNTERVAILING DUTY ORDERS

Brazil:	Brass Sheet and Strip (C–351–604)	01/08/87, 52 FR 698
Korea:	Stainless Steel Cookware (C–580–602)	01/20/87, 52 FR 2140
Spain:	Stainless Steel Wire Rod (C–469–004)	01/03/83, 48 FR 52
Taiwan:	Stainless Steel Cookware (C–583–604)	01/20/87, 52 FR 2141

Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party (as defined in §§ 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to revocation and no interested party requests an administrative review by the last day of the 5th anniversary month.

Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these countervailing duty orders. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke these orders.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: March 18, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–7963 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–821–808, A–823–808, A–570–849, and A–791–804]

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China (PRC), the Russian Federation, the Republic of South Africa, and Ukraine: Postponement of Preliminary Determination in Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determination for the investigation on certain cut-to-length carbon steel plate products from the People's Republic of China, the Russian Federation, the Republic of South Africa, and Ukraine. This postponement is made pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, ''the Act'').

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Elizabeth Patience, for companies from the PRC, at 202–482–0190 or 482-0195; for companies from the Russian Federation or Ukraine, contact Nithya Nagarajan or Steven Presing at 482–0193 or 482-0194; for companies from the Republic of South Africa contact Charlie Rast or Robin Gray at 482–5811 or 482–0196; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Postponement of Preliminary Determinations

We have determined that these investigations are extraordinarily complicated within the meaning of section 733(c)(1)(B)(i) of the Act. Among other considerations, there is a large number of respondents, and claims for separate rates will have to be analyzed individually (*see* Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement to Robert LaRussa, Acting Assistant Secretary, Import Administration, March 20, 1997).

Furthermore, we have determined that the parties concerned are cooperating, as required by section 733(c)(1)(B) of the Act, and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act.

For these reasons, the deadline for issuing the preliminary determination in these cases is now no later than May 14, 1997.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: March 21, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement, Group III.

[FR Doc. 97–7965 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–DS–P

Announcement of a Homefurnishings Products Trade Mission to South Africa

March 24, 1997.

The Department of Commerce announces a Homefurnishings Products Trade Mission to South Africa.

Date: July 20–25, 1997

Description: Trade missions are planned visits to introduce U.S. firms to foreign buyers and to establish representation agreements including a review of prospective agents' qualifications by U.S. Embassy personnel. All products displayed must be made-in-the-USA.

Location: Johannesburg, Durban, and Cape Town. Business meetings will be held in hotels selected by U.S. Embassy personnel stationed in South Africa.

Costs: $3,500 per participant. Includes setup, appropriate furnishings, interpreter assistance, promotions, hospitality functions, and market briefings.

Products: Home furnishing fabrics, both window treatment fabrics and upholstery fabrics; carpets and rugs, bed and bath linen and decorative accessories such as cushions and throws.

For further information contact W. E. Dawson at the U.S. Department of Commerce, room H–3100, Washington, DC 20230 or call (202) 482–5155, Fax: (202) 482–2859.

Troy H. Cribb,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries.

[FR Doc. 97–7947 Filed 3–27–97 8:45 am]

BILLING CODE 3510–DR–F

National Oceanic and Atmospheric Administration

[I.D. 020697A]

Formation of Advisory Panels for National Academy of Sciences Study on Individual Fishing Quotas; Extension of Deadline

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice extending deadline for nominations.

SUMMARY: Notice is hereby given that NMFS is extending the deadline for sending nominations for two advisory panels for an Individual Fishing Quota study to be conducted by the National Academy of Sciences' National Research Council. The advisory panel formation complies with the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996. The deadline for application is being extended to ensure that all interested parties have sufficient time to respond to this notice, and to ensure that NMFS has the widest range of applicants from which to select panel members.

DATES: Interested parties should submit a statement of interest by April 14, 1997.

ADDRESSES: Send statements of interest to the Director of the Office of Science and Technology, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910.

FOR FURTHER INFORMATION CONTACT: Amy Gautam, (301) 713–2328.

SUPPLEMENTARY INFORMATION: Interested parties should refer to the previous **Federal Register** notice on this subject (I.D. 020697A), published February 25, 1997, at 62 FR 8429, for further information about the role of the advisory panels and what to include in a statement of interest. NMFS will announce the selection of advisory panel members no later than May 1, 1997.

Dated: March 24, 1997.

Rolland A. Schmitten,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 97–7886 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 032097C]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory bodies will meet in Anchorage, Alaska. All meetings are open to the public with the exception of Council executive sessions to discuss personnel, international issues, and litigation.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

DATES: The meetings will be held the week of April 14, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

FOR FURTHER INFORMATION CONTACT: Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Advisory Panel (AP) and the Scientific and Statistical Committee (SSC) will begin on Monday, April 14, 1997, at 8:00 a.m. The AP and SSC should conclude their meetings by Thursday, April 17. The Council will begin their plenary session on Tuesday, April 15, at 8:00 a.m., concluding by Saturday, April 19, 1997. Other committee and workgroup meetings may be held on short notice during the week; notices will be posted at the meeting site. An executive session is tentatively scheduled for noon on Friday, April 18, 1997.

The agenda for the meetings will include the following subjects:

1. Reports from NMFS and Alaska Department of Fish and Game on the current status of the fisheries off Alaska, and reports on enforcement.

2. Initial review of seabird avoidance measures for the halibut fisheries, changes to the halibut catch sharing plan for International Pacific Halibut Commission Area 4 and subsistence halibut regulations.

3. Review and consider release for public review of analysis for halibut charterboat management.

4. Initial review of proposed amendments to the halibut and sablefish individual fishing quota (IFQ) program. Status reports on the fee and loan programs and central title registry for the IFQ and Community Development Quota programs, and national IFQ panels. Status report on weighmaster requirements for the IFQ fisheries.

5. Review and final action on regulations for halibut donations to food banks.

6. Review committee recommendations on vessel bycatch allowance measures; task staff with further development.

7. Approve analysis of Gulf of Alaska improved retention and utilization alternatives for public review.

8. Begin development of alternatives for analysis to replace current inshore/offshore regulations.

9. Review draft regulations for Council member recusal.

10. Groundfish issues to be addressed include the following:

(a) Discussion papers on rockfish directed fishing standards for the Gulf of Alaska and rolling closures to protect survey sites in the Gulf of Alaska;

(b) Final action on amendment to prohibit directed fishing on forage fish species;

(c) Initial review of an amendment to allocate 2 percent of the Atka mackerel total allowable catch to the jig fishery in the Bering Sea Aleutian Islands; and

(d) Approve Vessel Incentive Program bycatch standards for the second half of 1997.

11. Review the stock assessment and fishery evaluation report for the scallop fishery and approve catch allocations; review actions by the Board of Fisheries in managing the scallop fishery.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: March 21, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–7887 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030497D]

Pacific Coast Pinniped Interaction Investigation and Report

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS conducted an investigation to determine whether California sea lions and Pacific harbor seals are having a significant negative impact on the recovery of certain salmonid stocks or on the coastal ecosystems of Washington, Oregon, and California. After completion of the report of the scientific investigation (scientific report), NMFS prepared a draft report to Congress to submit recommendations, resulting from discussions with the Pacific States Marine Fisheries Commission (PSMFC) to address issues and problems identified in the scientific report. The scientific report is complete and available for public information, and the draft report to Congress is available for public review and comment (see **ADDRESSES**).

DATES: Comments on the draft report to Congress must be submitted on or before June 26, 1997.

ADDRESSES: Copies of the scientific report and the draft report to Congress are available from, and written comments should be sent to, William Stelle, Jr., Administrator, NMFS, Northwest Region, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115, Attn: West Coast Pinniped Report, or Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Attn: West Coast Pinniped Report.

FOR FURTHER INFORMATION CONTACT: Joe Scordino (206) 526–6143, or Tom Eagle (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

The MMPA directs the Secretary of Commerce (Secretary) to conduct a scientific investigation to determine if California sea lions and Pacific harbor seals (a) are having a significant negative impact on the recovery of salmonid fishery stocks that have been listed as endangered species or threatened species under the Endangered Species Act (ESA), or that the Secretary finds are approaching endangered or threatened status; or (b) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California. After completion of the investigation, NMFS on the behalf of the Secretary is directed to enter into discussions with the PSMFC on behalf of Washington, Oregon, and California, to address any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. The recommendations from these discussions, along with the scientific report, are to be made available to the public for review and comment for a period of 90 days, and then submitted to Congress.

NMFS established a Working Group to investigate the matters directed by Congress. Because NMFS did not have available resources and there was insufficient time to conduct rigorous field investigations on the issues identified by Congress within the specified 1-year timeframe, the investigation focused on a review of information from past field studies. The Working Group consisted of NMFS and state biologists with expertise in salmonids, marine mammals, and the interactions between them. The Working Group compiled and reviewed all available information on the status and trends of California sea lions, Pacific harbor seals, and the seven species of salmonids found in Washington, Oregon, and California. Members also conducted several additional studies to augment existing information. The Working Group produced the scientific report, ''Investigation of Scientific Information on Impacts of California Sea Lions and Pacific Harbor Seals on Salmonids and on the Coastal Ecosystems of Washington, Oregon and California,'' which has been submitted for publication as a NOAA technical memorandum.

In June 1996, NMFS began discussions with PSMFC and representatives of Washington, Oregon, and California. Over the course of four meetings and numerous conference calls during the last 8 months, two issues were identified from the scientific investigation, and four recommendations were developed.

Issues

The two issues on pinniped impacts on salmonids and west coast ecosystems described in the Report are:

1. California sea lion and Pacific harbor seal populations on the West Coast are increasing while many salmonid populations are decreasing. Salmonid populations that are depressed and declining, especially those that are listed or proposed to be listed under the ESA, can be negatively impacted by expanding pinniped populations and attendant predation.

2. Increasing California sea lion and Pacific harbor seal populations and their expanding distribution are negatively impacting commercial and recreational fisheries, damaging private property, and posing threats to public safety.

Recommendations

The four recommendations in the draft report to Congress are:

1. *Implement site-specific management for California sea lions and Pacific harbor seals*. Establish a framework that would allow state and Federal resource management agencies to immediately address conflicts involving California sea lions and Pacific harbor seals. Any lethal takings would have to be within the Potential Biological Removal levels established by NMFS for all human causes of mortality.

The three components of the framework would be: (a) In situations where California sea lions or Pacific harbor seals are preying on salmonids that are listed or proposed for listing under the ESA, immediate use of lethal removal by state or Federal resource agency officials would be authorized; (b) in situations where California sea lions or Pacific harbor seals are preying on salmonid populations of concern to the state or are impeding passage of these populations during migration as adults or smolts, lethal takes by state or Federal resource agency officials would be authorized if (i) non-lethal deterrence methods are underway and are not fully effective, or (ii) non-lethal methods are not feasible in the particular situation or have proven ineffective in the past; and, (c) in situations where California sea lions or Pacific harbor seals conflict with humans, such as at fishery sites and marinas, lethal removal by state or Federal resource agency officials would be authorized as a last resort when an individual pinniped fails to respond to repeated deterrence attempts, or when repeated deterrence attempts do not affect the behavior of an individual pinniped over the long-term.

2. *Develop safe, effective non-lethal deterrents*. In order to provide an array of options broader than lethal removal to resolve West Coast pinniped problems, there is a pressing need for research on the development and evaluation of deterrent devices and further exploration of other non-lethal removal measures. Potential options need to be evaluated in a concerted, adequately funded effort to address this issue. Research and development of

pinniped deterrence methods should be a research priority for addressing expanding pinniped populations on the West Coast.

3. *Selectively reinstate authority for the intentional lethal taking of California sea lions and Pacific harbor seals by commercial fishermen to protect gear and catch.* Prior to the 1994 Amendments to the MMPA, commercial fishermen were allowed to kill certain pinnipeds as a last resort in order to protect their gear or catch. Although the 1992 NMFS legislative proposal contained provisions to continue such authority, it was not included in the 1994 Amendments to the MMPA. A limited authorization, based on demonstrated need, should be provided to certain commercial fishermen at specified sites to use lethal means, as a last resort, to protect their gear and catch from depredation by California sea lions and Pacific harbor seals until such time that effective non-lethal methods are developed for their specific situation.

4. *Information needs.* An array of additional information is needed to better evaluate and monitor California sea lion and Pacific harbor seal impacts on salmonids and other components of the West Coast ecosystems. Details of such studies are described in the draft report to Congress.

Authority: 16 U.S.C. 1389(f)

Dated: March 24, 1997.

Hilda Diaz-Soltero,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–7885 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Man-Made Fiber Products Produced or Manufactured in the People's Republic of China

March 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on April 1, 1997, for goods produced or manufactured in China and exported on and after April 1, 1997, a part-category visa will be required for textile products in Category 666–C. For textile products in Category 666, other than 666–C, a 666 visa will be required. During the period April 1, 1997 through April 30, 1997, U.S. Customs Service will accept either the new or the old visa. Goods exported on and after May 1, 1997 shall be denied entry if not visaed as 666 (other than 666–C) or 666–C.

See 60 FR 22567, published on May 8, 1995.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 3, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on April 1, 1997, goods produced or manufactured in China and exported on and after April 1, 1997, in Category 666 shall require a 666 (other than 666–C) [1] or 666–C [2] visa. During the period April 1, 1997 through April 30, 1997, you are directed to accept either the new or old visa. Goods exported on and after May 1, 1997 shall be denied entry if not visaed as 666 (other than 666–C) or 666–C.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–7946 Filed 3–27–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparisons in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	State	USAF Project Title
Maxwell AFB	AL	General Library.
Maxwell AFB	AL	Grounds Maintenance.
Clear	AK	Power Production.
Eielson AFB	AK	Miscellaneous Services.
Eielson AFB	AK	Admin Telephone PBX.
Elmendorf AFB	AK	Power Production.
Elmendorf AFB	AK	Military Family Housing Management.
Edwards AFB	CA	Base Supply.
Los Angeles AFS	CA	Communication Functions.
Los Angeles AFS	CA	Publications Distribution Office.
Los Angeles AFS	CA	Education Services.
March AFB	CA	Airfield Operations & Weather.

[1] Category 666: all HTS numbers except 6303.92.2000 (Category 666–C).

[2] Category 666–C: only HTS number 6303.92.2000.

Installation	State	USAF Project Title
March AFB	CA	Transient Aircraft Maintenance.
March AFB	CA	Base Operating Support (BOS).
Onizuka AFS	CA	Utilities Plant.
Vandenberg AFB	CA	Base Operating Support.
Vandenberg AFB	CA	Structural Maintenance.
Buckley ANGB	CO	Airfield Management.
Falcon AFB	CO	Communication O&M.
Falcon AFB	CO	Utilities Plant.
Peterson AFB	CO	Base Operating Support.
Eglin AFB	FL	Library.
Eglin AFB	FL	Education Services.
Eglin AFB	FL	Acquisition Security.
Eglin AFB	FL	Civil Engineering.
Homestead AFB	FL	Airfield Operations & Weather.
Homestead AFB	FL	Base Operating Support.
Hurlburt Com Field	FL	Grounds Maintenance.
Hurlburt Com Field	FL	Transient Aircraft Maintenance.
Patrick AFB	FL	Base Operating Support.
Tyndall AFB	FL	BOS & Backshop Aircraft Maintenance.
Dobbins AFB	GA	Control Tower Operations.
Dobbins AFB	GA	Communication Functions.
Dobbins AFB	GA	Weather Services.
Dobbins AFB	GA	Base Operating Support.
Robins AFB	GA	Audiovisual.
Robins AFB	GA	Military Family Housing Maintenance.
Ramstein AB	Germany	Mess Attendants.
Spangdahlem AB	Germany	Mess Attendants.
Grissom	IN	Airfield Operations & Weather.
Grissom	IN	Transient Aircraft Maintenance.
Grissom	IN	Base Operating Support.
New Orleans NAS	LA	Base Operating Support.
Hanscom AFB	MA	Audiovisual.
Hanscom AFB	MA	Data Automation.
Hanscom AFB	MA	Vehicle O&M.
Hanscom AFB	MA	Laboratory Support Services.
Otis ANGB	MA	Transient Aircraft Maintenance.
Westover AFB	MA	Control Tower Operations.
Westover AFB	MA	Weather Services.
Westover AFB	MA	Base Operating Support.
Andrews AFB	MD	Administrative Support.
Minneapolis/St Paul	MN	Communication Functions.
Minneapolis/St Paul	MN	Base Operating Support.
Columbus AFB	MS	Base Operating Support.
Keesler AFB	MS	Technical Training Center, Equip. Maint.
Malmstrom AFB	MT	Base Supply.
Multiple Installations	Mult	Technical Training, Electronic Printing Training.
McGuire AFB	NJ	Military Family Housing Maintenance.
Cannon AFB	NM	Military Family Housing Maintenance.
Kirtland AFB	NM	Base Supply.
Kirtland AFB	NM	PMEL.
Kirtland AFB	NM	VEHICLE O&M.
Nellis AFB	NV	Military Family Housing Maintenance.
Niagara Falls IAP	NY	Weather Services.
Niagara Falls IAP	NY	Base Operating Support.
Wright-Patterson AFB	OH	Base Operating Support.
Youngstown Municipal Arpt	OH	Base Operating Support.
Tinker AFB	OK	Communication Functions.
Greater Pittsburgh Arpt	PA	Base Operating Support.
Willow Grove NAS	PA	Base Operating Support.
Brooks AFB	TX	Laboratory Support Services.
Carswell AFB	TX	Base Operating Support.
Lackland AFB	TX	Grounds Maintenance.
Lackland AFB	TX	Animal Caretaking.
Laughlin AFB	TX	Aircraft Maintenance.
Laughlin AFB	TX	Base Communications.
Sheppard AFB	TX	Technical Training, Telephone Systems.
Hill AFB	UT	Grounds Maintenance.
Hill AFB	UT	Recreational Support.
Gen Mitchell Field	WI	Base Operating Support.
F E Warren AFB	WY	Base Supply.

Carolyn A. Lunsford.

Air Force Federal Register Liaison Officer.

[FR Doc. 97–7904 Filed 3–27–97; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement to Evaluate a Permit Application by Empire, Ltd.

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Empire, Ltd., of Wood-Ridge, New Jersey, has submitted an application for a Department of the Army permit to discharge 2.5 million cubic yards of dredged and/or fill material into 206 acres of waters of the United States, including wetlands, to facilitate the construction of a commercial mall with retail and office space, hotel, light industrial facilities, roads, and infrastructure. The discharge of dredged and/or fill materials into waters of the United States requires a Department of the Army Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). The Environmental Impact Statement (EIS) process will assist the U.S. Army Corps of Engineers (USACE) in determining whether to issue or deny a permit for the project under these authorities. This action is taking place in accordance with the USACE procedures for implementing the National Environmental Policy Act (33 CFR Parts 230 and 325).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Seebode, Chief, Regulatory Branch, New York District Corps of Engineers, 26 Federal Plaza, Room 1937, New York, New York 10278–0090, Telephone (212) 264–3996.

SUPPLEMENTARY INFORMATION:

1. Project Description

Empire, Ltd. submitted an application for a Department of the Army permit to discharge approximately 2.5 million cubic yards of dredged and/or fill material into 206 acres of waters and wetlands, to create dry land to facilitate the construction of a major commercial development project. The project, known as Meadowlands Mills, would include a shopping mall, entertainment center, office complex, hotel, mass transit center, light industrial facilities, and associated parking structures and roadways. The project is proposed to be developed by Empire, Ltd., and the Mills Corporation of Arlington, Virginia. The work is proposed on a 592 acre site containing wetlands and open waters adjacent to the Hackensack River within the Hackensack Meadowlands District in the Townships of Carlstadt, Moonachie, and South Hackensack, Bergen County, New Jersey. The applicant has submitted a wetlands mitigation plan with the application proposing enhancement, creation, and preservation activities, to establish approximately 380 acres of higher value wetlands onsite.

On February 6, 1997, USACE completed an Environmental Assessment (EA) under the Corps of Engineers and Council on Environmental Quality regulations for implementing NEPA. The EA was prepared utilizing information made available through the public interest process until that date, including the issuance of a public notice and the conduct of two public hearings in the vicinity of the project. The EA concluded that USACE will require the preparation of an Environmental Impact Statement to process the application.

2. Reasonable Alternatives

In addition to the no action alternative, reasonable alternatives to be considered include the following:

a. Off-site alternatives to construction as proposed

b. On-Site alternatives to construction as proposed

c. Construction Techniques

3. EIS Scoping

As part of the EIS scoping process, comments on the proposed scope of the EIS will be accepted until 45 days after the publication of this Notice of Intent in the **Federal Register**; all comments should be addressed to the contact person indicated above. In addition to receiving written comments, the USACE will receive oral comments during a public scoping meeting scheduled for the latter part of the scoping period. Notice of the public scoping meeting will be made through mailings and/or legal notices in local newspapers.

4. Public Participation in the EIS Process

The EIS process will provide opportunities for full participation by interested federal, state, and local agencies, as well as other interested organizations and the general public. All interested parties are encouraged to submit their names and addresses to the contact person indicated above for inclusion on the distribution list for the draft and final EIS and any related public notices.

5. Federal Agency Participation in the EIS Process

Federal agencies with an interest in this EIS effort are requested to participate as cooperating agencies pursuant to 40 CFR Part 1501.6. All interested federal agencies are requested to submit a letter of intent to Colonel Gary Thomas, Corps of Engineers, District Engineer.

John R. Hartmann,

Chief, Operations Division.

[FR Doc. 97–7906 Filed 3–27–97; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF ENERGY

[Docket No. EA–142]

Application To Export Electric Energy; Eastern Power Distribution, Inc.

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: Eastern Power Distribution, Inc. (EPD), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 7, 1997, EPD filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada as a power marketer, pursuant to section 202(e) of the FPA. Specifically, EPD has proposed to transmit to Canada electric energy purchased from suppliers in the United States and Mexico.

EPD would arrange for the exported energy to be transmitted to Canada, over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities,

Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. Each of the international transmission facilities, as more fully described in the application, has previously been issued a Presidential permit pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with: Gordon J. Smith, Esq., John, Hengerer and Esposito, 1200 17th St., NW., Suite 600, Washington, DC 20036–3006, (202) 429–8814 *and* Lisa Yoho, Director of Regulatory Affairs, Eastern Power Distribution, Inc., 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314, telephone (703) 317–2244.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 24, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–7936 Filed 3–27–97; 8:45 am]

BILLING CODE 6450–01–P

[Docket No. EA–141]

Application To Export Electric Energy; Inland Pacific Energy Services Corporation

AGENCY: Office of Fossil Energy, DOE.

AGENCY: Notice of application.

SUMMARY: Inland Pacific Energy Service Corporation (Inland Pacific), a power marketer, has submitted an application to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 6, 1997, Inland Pacific filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the FPA. Specifically, Inland Pacific has proposed to transmit to Canada electric energy purchased from electric utilities and federal power marketing agencies.

Inland Pacific would arrange for the exported energy to be transmitted to Canada, over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Company, Minnkota Power, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power and Vermont Electric Transmission Company. Each of the international transmission facilities, as more fully described in the application, has previously been issued a Presidential permit pursuant to Executive Order 10485, as amended.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Additional copies are to be filed directly with: Paula E. Pyron, Andrew K. Soto; Ball Janik LLP, 101 S.W. Main Street, Suite 1100, Portland, Oregon 97204, (503) 228–2525 *and* J. Gary Stauffer, Executive Vice President, Inland Pacific Energy Services Corp., 1124 W. Riverside, Suite 4000, Spokane, Washington 99201 (509) 459–1363.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on March 24, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–7937 Filed 3–27–97; 8:45 am]

BILLING CODE 6450–01–P

[Docket EA–98–E]

Application to Amend Electricity Export Authorization; Western Systems Power Pool

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Western Systems Power Pool (''WSPP'') has filed an application on behalf of its members to amend its electricity export authorization issued September 5, 1996, in Order EA–98–C. The application requests the authorization be amended to permit 8 new member companies to export electricity to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before April 28, 1997.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–52), Office of Coal & Power, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT:

Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On September 5, 1996, in Docket EA–98–C, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized 42 ''public utility'' members of the WSPP to export electric energy to Canadian members, British Columbia Hydro and Power Authority (BC Hydro), or other future Canadian members. The facilities to be utilized for these exports are the international transmission facilities owned and operated by the Bonneville Power Administration (BPA), also a WSPP member. The facilities consist of two 500-kV transmission lines at Blaine, Washington, and one 230-kV transmission line at Nelway, British Columbia, that interconnect with facilities of BC Hydro, and one 230-kV line, also at Nelway, connecting to West Kootenay Power, Limited. The construction and operation of these international transmission facilities was previously authorized by Presidential Permits PP–10, PP–46, and PP–36, respectively.

On March 12, 1997, WSPP submitted an application to amend the export authorization by adding 8 new member companies to the list of authorized electricity exporters. The new members are: Intercoast Power Marketing Company, National Gas & Electric L.P., PowerEx, TransAlta Enterprises Corporation, TransCanada Energy Ltd., Tucson Electric Power Company, Western Power Services, Inc., and Williams Energy Services Company.

Procedural Matters

Any persons desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above.

Additional copies are to be filed directly with: Michael E. Small, Esq., Wright & Talisman, P.C., 1200 G Street, Suite 600, Washington, D.C.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 24, 1997.

Anthony J. Como,

Director, Electric Power Regulation, Office of Coal & Power Systems, Office of Coal & Power IM/EX, Office of Fossil Energy.

[FR Doc. 97–7935 Filed 3–27–97; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 97–13: Centers of Excellence for Laser Applications in Medicine

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 (ER), U.S. Department of Energy (DOE) announces its interest in receiving research applications from potential applicants for funding of Centers of Excellence for Laser Applications in Medicine (Centers). These Centers are intended to carry out research that will advance the application of laser technology in the clinical practice of medicine. A Center must have existing advanced capabilities for fundamental research in the medical application of lasers, is to be based in a hospital with a close tie to a school of medicine, is to offer a strong program of research that covers a wide range both of scientific disciplines and of fields of medicine, and is to place emphasis on training and dissemination of developments in this field of research.

DATES: Preapplications should be received by May 30, 1997. However, earlier submissions will be gladly accepted. Formal applications in response to this notice must be received by 4:30 p.m., E.D.T., August 15, 1997.

ADDRESSES: Preapplications referencing Program Notice 97–13 should be forwarded to: Dr. Roland F. Hirsch, Medical Applications and Biophysical Research Division, ER–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Attn: Program Notice 97–13. Fax submissions are acceptable, fax number (301) 903–0567.

Formal applications referencing Program Notice 97–13 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 97–13. This address also 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. An original and seven copies of the application must be submitted. Applicants are required to follow the formal instructions given in the **SUPPLEMENTARY INFORMATION** Section of this Notice.

FOR FURTHER INFORMATION CONTACT: Dr. Roland F. Hirsch, Medical Applications and Biophysical Research Division, ER–73, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–3213; E-mail roland.hirsch@oer.doe.gov.

SUPPLEMENTARY INFORMATION: The Centers of Excellence for Laser Applications in Medicine were established in 1991 upon the recommendation in the Conference Report for the Fiscal Year 1991 Energy and Water Development Appropriation Act. There has been substantial progress in the field since that time. Therefore, potential applicants are encouraged to propose Center programs that are appropriate for the current state of the art in fundamental areas of laser research relevant to clinical research, that will enable progress toward new areas of clinical use of lasers, and that will increase the application of lasers through training and dissemination activities. There is particular interest in research leading to new laser applications for non-invasive medicine and, in general, to new medical procedures that are consistent with the national need to control the costs of health care.

Applicants are encouraged to utilize the extensive fundamental scientific expertise that is available at the National Laboratories supported by the Department through formal and informal arrangements for consultation and collaboration. Applicants are also encouraged to identify objectives of the proposed research program that complement the aims of other programs which are supported by the Medical Applications and Biophysical Research Division such as research in radiopharmaceuticals and molecular nuclear medicine, biomedical imaging instrumentation, Boron Neutron Capture

Therapy (BNCT), structural biology, analytical chemistry, and genome instrumentation.

Organizations with existing Centers of Excellence for Laser Applications in Medicine grants must submit with their renewal application the required Progress Report, which should include a section describing research accomplishments that have been carried over into clinical research and practice.

It is anticipated that up to $1,500,000 are expected to be available for grant awards in FY 1998, contingent upon availability of appropriated funds. The actual magnitude of the funds available and the number of awards which can be made will however depend on the budget process. It is anticipated that up to four awards of up to $600,000 each annually for a three year period will be made, with out-year support contingent on availability of funds, progress of the research, and programmatic needs.

Potential applicants are encouraged to submit a brief preapplication describing the proposed Center and its major activities. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preapplication should consist of a three-to-five-page concept paper on the program contemplated for an application to the Centers of Excellence for Laser Applications in Medicine program. The concept paper should focus on the scientific objectives and significance of the proposed research, including an outline of the approaches planned, should briefly describe the organization of the proposed center and its setting, and should provide information relating to other aspects of the planned program, including collaborations with the DOE National Laboratories and other research organizations. The preapplication gives an opportunity to advise potential applicants on the suitability of their concept and research program to the mission of the Centers of Excellence program. A response to timely preapplications indicating the appropriateness of submitting a formal application will be communicated by June 20, 1997. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application. ER's preapplication policy for submitting preapplications can be found on ER's Grants and Contracts Web Site at: http://www.er.doe.gov/production/grants/preapp.html.

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria 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.

Applicants are expected to use the following format in addition to following instructions in the Office of Energy Research Application Guide.

- ER standard face page (DOE F4650.2)
- Table of Contents
- Project abstract (no more than one page)
- Budgets for each year of the three-year project period (using DOE F 4620.1)
- Written explanation of the budget items
- Budgets and budget explanations for each collaborative subproject, if any
- Project narrative (recommended length is no more than 40 pages):
  - Goals
  - Research plan for each major component of the research program
  - Preliminary studies (if applicable)
  - Research design and methodologies
  - Plans for training
  - Plans for dissemination of new concepts and techniques
- Literature cited
- Description of existing facilities for research into laser applications in medicine (up to five pages)
- Description of hospital setting and medical school ties for the proposed Center, including support proposed to be offered to the Center's program by these units (up to five pages)
- Collaborative arrangements (if applicable)
- Biographical sketches (limited to 2 pages for each senior investigator)
- Current and pending funding for each senior investigator
- All required information for any activities involving human subjects (see ER Application Guide)
- All required information for any activities involving vertebrate animals (see ER Application Guide)

Information about development and submission of applications, eligibility, evaluations and selection processes, and other policies and procedures may be found in 10 CFR part 605 and the Office of Energy Research Application Guide for the Financial Assistance Program. 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. Printed copies of the Guide are available from the Medical Applications and Biophysical Research Division for potential applicants who are unable to access the Web version.

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 March 24, 1997.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 97–7934 Filed 3–27–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–262–000]

Ashland Exploration, Inc.; Notice of Application

March 24, 1997.

Take notice that on March 21, 1997, Ashland Exploration, Inc. (Ashland), 14701 Saint Mary's Lane, Houston, Texas 77079, completed the filing of an application for abandonment pursuant to Section 7(b) of the Natural Gas Act initially submitted on February 24, 1997. Ashland requests authorization to abandon, by sale, its jurisdictional facilities in the Martha Field to Meridian Exploration Corp. and Abarta Oil & Gas Company, Inc., all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

The facilities to be abandoned consist of approximately 29.6 miles of 6-inch and 8-inch diameter pipeline extending from the outlet of Ashland's gas processing plant in Lawrence County, Kentucky to the point where those facilities intersect with the facilities of Tennessee Gas Pipeline Company near Burnaugh, Kentucky, and three associated field taps.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before

April 14, 1997, 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 385.214 and 18 CFR 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. 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 Ashland to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7849 Filed 3–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–263–000]

Ashland Exploration, Inc.; Notice of Application

March 24, 1997.

Take notice that on March 21, 1997, Ashland Exploration, Inc. (Ashland), 14701 Saint Mary's Lane, Houston, Texas 77079, completed the filing of an abbreviated application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act initially submitted on February 24, 1997. Ashland requests authorization to modify its remaining Martha Field pipeline facilities to accept the interconnection of a tap with the facilities to be constructed by Tennessee Gas Pipeline Company (Tennessee) and to install and operate compression associated with the Tennessee tap. Ashland also requests modification of its current certificate authority to deliver gas from Kentucky to West Virginia for sale to Mountaineer Gas Company to permit it to deliver gas to any buyer, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

The remaining Martha Field pipeline facilities consist of approximately 6.9 miles of pipeline in the State of Kentucky which terminates in the State of West Virginia, approximately 6,000 feet from Ashland's Catlettsburg, Kentucky refinery.

Any persons desiring to be heard or to make any protest with reference to said application should, on or before April 14, 1997, 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 385.214 and 18 CFR 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the request should be granted. 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 Ashland to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7850 Filed 3–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP96–213–000, –001, and –004, and CP96–559–000]

Columbia Gas Transmission Corp. and Texas Eastern Transmission Corp.; Notice of Availability of the Environmental Assessment for the Proposed Market Expansion Project

March 24, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Columbia Gas Transmission Corporation (Columbia) and Texas Eastern Transmission Corporation (Texas Eastern) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas transmission pipelines, compression, storage field pipeline and well head facilities, and points of delivery and measurement facilities in Ohio, West Virginia, Virginia, Pennsylvania, and Maryland. The activities and facilities proposed by Columbia include:

- construct 50 miles of new, loop, and replacement pipeline and uprate the maximum allowable operating pressure (MAOP) of about 282 miles of pipeline;
- construct, relocate, and/or uprate about 32,209 horsepower (hp) of compression at 12 existing compressor stations, construct 20,975 total hp at two new compressor stations, and abandon about 8,280 hp of compression at five existing compressor stations;
- increase the performance capability of 13 existing storage fields, including construction of 36 new wells, construction of about 23 miles of 4- to 24-inch-diameter storage field pipeline, abandonment of about 7 miles of 2- to 10-inch-diameter storage field pipeline, and ''well enhancement'' work at about 277 existing storage wells; and
- upgrade or replace facilities at 12 existing meter stations and construct 2 new meter stations.

The activities and facilities proposed by Texas Eastern include:

- replace about 26 miles of idled 20- and 24-inch-diameter pipeline in three sections;
- upgrade two existing compressor stations by a total of 6,000 hp and

construct 13,400 hp of compression at one existing compressor station; and

• upgrade an existing interconnection with Columbia.

The purpose of the facilities proposed by Columbia would be to provide 506,795 dekatherms per day (Dth/d) of additional firm transportation and storage service to 23 customers. In order to provide the proposed firm entitlements to its customers, Columbia proposes to lease 141,500 Dth/d of firm capacity from Texas Eastern. The facilities proposed by Texas Eastern are needed to provide this delivery capacity on a daily basis to Columbia.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP96–213–000, –001, and –004 and CP96–559–000 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than April 23, 1997, to ensure consideration prior to a Commission decision on this proposal.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7847 Filed 3–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–291–000]

Southern Natural Gas Company, Destin Pipeline Company, L.L.C.; Notice of Application

March 24, 1997.

Take notice that on March 14, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, and Destin Pipeline Company, L.L.C. (Destin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP97–291–000 a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for a certificate of public convenience and necessity to construct and operate certain pipeline measurement and related facilities in Franklin, Attala and Jefferson Counties, Mississippi; approval of Southern's abandonment of capacity by lease to Destin and Destin's acquisition thereof and pregranted abandonment and reacquisition of such capacity; and approval of rolled-in rate treatment for the capacity lease payments and revenues and cost-of-service of the proposed facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Destin states that in related Docket No. CP96–655–001, *et al.*, Destin is seeking authorization to construct, own and operate one offshore platform, 76 miles of 36-inch offshore pipeline facilities, 134 miles of 36-inch and 30-inch onshore pipeline facilities, two miles of 16-inch onshore pipeline facilities, two onshore compression facilities and related pipeline interconnection, measurement and appurtenant facilities, designed to transport large quantities of natural gas from deepwater areas and production along the Destin Corridor to downstream pipeline interconnections in southern and central Mississippi. Destin states that the Destin Pipeline will extend in a northerly direction from Main Pass Block 260, Gulf of Mexico, to an onshore terminus at its interconnection with Southern near Enterprise, Mississippi. In addition to Southern, Destin states that it will physically interconnect with four other interstate pipelines: Florida Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company and Koch Gateway Pipeline Company. In addition, related Docket No. CP96–655–001, *et al.*, provides for two additional delivery points to Texas Eastern Transmission Corporation (Texas Eastern) in Mississippi. Accordingly, in Docket No. CP97–291–000, Southern and Destin propose for Southern to lease capacity on its pipeline system to Destin to enable Destin to offer Texas Eastern as a delivery point on its system.

It is stated that Southern has agreed to lease to Destin, capacity on its pipeline system to the extent necessary to permit Destin to deliver up to 200 MMcf per day of natural gas (MMcfd) from an interconnection to be constructed between Destin's proposed pipeline system and Southern's pipeline at Southern's existing Enterprise compressor station in Clarke County, Mississippi to Texas Eastern (a) on a firm basis at a new meter station to be constructed by Southern at an interconnection with Texas Eastern on Southern's Cranfield-Gwinville Line in Franklin County, Mississippi (Union Church meter station) or (b) on an interruptible basis at Southern's existing interconnection with Texas Eastern downstream of Southern's Pickens compressor station on Southern's North Main Line in Attala County, Mississippi (Kosciusko meter station). Southern states that while it does not currently have an agreement with Texas Eastern for the proposed interconnection at the Union Church meter station, Southern will request such interconnection upon receipt of the authorization requested herein. It is stated that although Southern will continue to own and operate the facilities, Destin proposes to render open access transportation services to Destin's shippers by means of its leased capacity in Southern's system under the terms and conditions of Destin's FERC Gas Tariff, thus providing Destin with a seamless transportation service to its shippers without constructing duplicative facilities.

Southern requests authorization to construct and install the Union Church meter station in Franklin County, Mississippi, which will consist of one measurement station with dual 8-inch rotary meters, including tap, metering and appurtenant facilities, sized to handle 200 MMcfd on Southern's Cranfield-Gwinville Line; to modify its existing Gwinville compressor station on Southern's Franklin-Gwinville Lines in Jefferson County, Mississippi, to allow 200 MMcfd to flow west from Gwinville to the Union Church meter station; and to modify to its existing Kosciusko meter station on Southern's Second North Main Line, Attala County, Mississippi, to expand the delivery capacity into Texas Eastern to 200 MMcfd. It is stated that the total estimated cost of the facilities to be constructed is $1.7 million.

The applicants state that in exchange for Southern's lease of capacity to permit Destin's delivery of 200 MMcfd to Texas Eastern, Destin will pay Southern $246,500 per year, for a total of $4,930,000 over the twenty-year term of the lease. The applicants also request pregranted abandonment and reacquisition authorization upon termination of the Capacity Lease Agreement, with the reacquisition to be at no cost to Southern.

Southern proposes in its next Section 4 rate proceeding to roll-in its cost of service for the proposed facilities and the revenue from the capacity lease payments and requests that the Commission approve such rate treatment. Destin also requests authorization for its lease payments made to Southern to be treated on a rolled-in basis with its cost of service proposed in Docket No. CP96–655–001, *et al.* Southern states that there will be no rate impact on Southern's current shippers as a result of rolling-in the cost of service of the proposed facilities because the estimated revenues generated from the lease payments received from Destin will equal the estimated cost of service of the proposed facilities on a net present value basis. Destin estimates that the rate impact of rolling-in the lease payments to Southern will be less than 1 percent. In addition, the applicants state that there will be financial and operational benefits to be realized from the lease arrangements and proposed facilities.

Specifically, the applicants request authorization for the following actions: (1) for Southern to construct, install and operate (a) a new meter station at an interconnection with Texas Eastern on Southern's Cranfield-Gwinville Line in Franklin County, Mississippi, (b) modification to Southern's existing Gwinville compressor station in Jefferson County, Mississippi, (c) modification to Southern's existing Kosciusko meter station in Attala County, Mississippi; (2) for Southern to abandon by lease, and Destin to acquire, capacity on Southern's system to the extent necessary to permit Destin to deliver 200 MMcfd of natural gas to Texas Eastern on a firm basis at the Union Church meter station or on an interruptible basis at the Kosciusko meter station; (3) authorization for Southern to charge Destin lease payments in an amount designed to collect the incremental cost of service of the proposed facilities over the 20-year term of the Lease Agreement on a present value basis; (4) a determination that the costs attributable to the proposed facilities and the revenues attributable to the lease payments received shall be included in Southern's cost of service and revenues on a rolled-in basis in any future rate proceedings; (5) a determination that in any rate proceeding concerning Southern's transportation rates, the revenue responsibility of the capacity lease services proposed in this application shall be limited to that collected by charging the lease payments authorized herein and no additional costs shall be allocated to these services during the term of the Lease Agreement; (6) a determination that the lease payments made by Destin to Southern shall be included in Destin's cost of service on a rolled-in basis in any future rate proceeding; and (7) pre-granted abandonment and reacquisition of the leased capacity upon termination of the Capacity Lease Agreement between the parties.

The applicants request an order by June 1, 1997, which is the date by which Destin has requested a Preliminary Determination on Non-environmental Matters in related Docket No. CP96–655–001, *et al.* so that the proposed pipeline project and the facilities proposed herein can be placed in service by July 1, 1998.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 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 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 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 Southern and Destin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7848 Filed 3–27–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL97–30–000, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

March 21, 1997.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Company

[Docket No. EL97–30–000]

Take notice that on March 12, 1997, South Carolina Electric & Gas Company (SCE&G), filed a Petition for Declaratory Order that SCE&G is not required to provide certain transmission service to the City of Orangeburg, South Carolina.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Entergy Services, Inc.

[Docket No. EL97–31–000]

Take notice that on March 13, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., tendered for filing a Petition for Declaratory Order and Exercise of Jurisdiction seeking Commission resolution of a dispute over the interpretation of an Entergy Arkansas, Inc. wholesale power agreement.

Comment date: April 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. El Paso Energy Marketing, Inc.

[Docket No. ER96–118–007]

Take notice that on March 13, 1997, El Paso Energy Marketing, Inc. tendered for filing a Notice of Change in Status.

4. Soyland Power Cooperative, Inc.

[Docket No. ER96–2973–000]

Take notice that on February 21, 1997, Soyland Power Cooperative, Inc. (Soyland), tendered for filing a rate schedule change pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission (Commission) Regulations. The filing consists of a rate

decrease pertaining to credit for energy supplied by Soyland under the Amended and Restated Power Coordination Agreement, Amendment No. 6 to the Power Coordination Agreement between Illinois Power Company (IP) and Soyland, dated October 5, 1984. On February 24, 1997, Soyland amended its February 21, 1997, submittal.

Soyland seeks waiver of the Commission's sixty-day prior notice requirement in order for the Amended and Restated Power Coordination Agreement to be effective as of September 1, 1996.

Copies of the filing were served upon Adams Electrical Co-operative, Clay Electric Co-operative, Inc., Clinton County Electric Cooperative, Inc., Coles-Moultrie Electric Cooperative, Corn Belt Electric Cooperative Inc., Eastern Illini Electric Cooperative, Edgar Electric Cooperative Association, Farmers Mutual Electric Company, Illinois Rural Electric Co., Illinois Valley Electric Cooperative, Inc., M.J.M. Electric Cooperative, Inc., McDonough Power Cooperative, Menard Electric Cooperative, Monroe County Electric Co-operative, Inc., Rural Electric Convenience Cooperative Co., Shelby Electric Cooperative, Southwestern Electric Cooperative, Inc., Spoon River Electric Co-operative, Inc., Tri-County Electric Cooperative, Inc., Wayne-White Counties Electric Cooperative, Western Illinois Electrical Coop. (the 21 member cooperatives), Illinois Power Company, and the Illinois Commerce Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER97–121–000]

Take notice that on March 11, 1997, Cinergy Services, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER97–325–001]

Take notice that on March 17, 1997, The Detroit Edison Company (Detroit Edison) tendered for filing a revised version of Detroit Edison's Wholesale Power Sales Tariff (WPS–1) (the WPS–1 Tariff). The revised WPS–1 Tariff was filed in accordance with the Commission's order issued February 14, 1997, in the instant docket.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER97–964–000]

Take notice that on March 13, 1997, Consumers Energy Company (Consumers) submitted for filing an amendment to its prior December 31, 1996, filing of a wholesale power sales tariff (PST–1) to permit Consumers to make wholesale electric generation sales to eligible customers at up to cost-based ceiling rates.

Consumers requests an effective date of January 1, 1997 and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER97–1459–000]

Take notice that on March 11, 1997, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Black Brook Energy Company

[Docket No. ER97–1676–000]

Take notice that on March 17, 1997, Black Brook Energy Company tendered for filing an amendment in the above-referenced docket.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Western Massachusetts Electric Company

[Docket No. ER97–1798–000]

Take notice that on March 7, 1997, Northeast Utilities Service Company on behalf of its affiliate Western Massachusetts Electric Company (WMECO), tendered for filing an amendment to the effective date requested for a proposed change to the following service agreement filed under WMECO's FERC Electric Service Tariff, Original Volume No. 1, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations: Borderline Sales Service Amended Service Agreement, between WMECO and Massachusetts Electric Company, dated as of November 12, 1996.

This filing proposes that the effective date for the aforementioned amendment to a service agreement be made sixty days following the original filing date of February 20, 1997. Copies of the filing were served upon Massachusetts Electric Company and the Massachusetts Department of Public Utilities.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER97–1875–000]

Take notice that on March 18, 1997, Western Resources, Inc. tendered an amendment for filing of a non-firm transmission agreement between Western Resources and Enron Power Marketing, Inc. Western Resources states that the purpose of this amendment is to request a revised effective date of February 1, 1997.

Copies of the filing were served upon Enron Power Marketing, Inc. and the Kansas Corporation Commission.

Comment date: April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Ocean State Power II

[Docket No. ER97–1890–000]

Take notice that on February 29, 1997, Ocean State Power II (Ocean State II), tendered for filing the following supplements (the Supplements) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplements No. 20 to Rate Schedule FERC No. 5
Supplements No. 20 to Rate Schedule FERC No. 6
Supplements No. 19 to Rate Schedule FERC No. 7
Supplements No. 20 to Rate Schedule FERC No. 8

The Supplements to the rate schedules request approval of Ocean State II's proposed rate of return on equity for the period beginning on April 29, 1997, the requested effective date of the Supplements, and ending on the effective date of Ocean State II's updated rate of return on equity to be filed in February of 1998.

Copies of the Supplements have been served upon, among others, Ocean State II's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

[Docket No. ER97–1908–000]

Take notice that on March 19, 1997, Delmarva Power & Light Company amended its February 28, 1997, filing to include an additional list of recipients.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Baltimore Gas & Electric Company

[Docket No. ER97–1950–000]

Take notice that on March 5, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a service agreement for non-firm point-to-point transmission service between BG&E and AIG Trading Corporation.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Baltimore Gas & Electric Company

[Docket No. ER97–1951–000]

Take notice that on March 5, 1997, Baltimore Gas & Electric Company (BG&E) tendered for filing a service agreement for non-firm point-to-point transmission service between BG&E and the Ohio Edison System.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Baltimore Gas & Electric Company

[Docket No. ER97–1952–000]

Take notice that on March 5, 1997, Baltimore Gas & Electric Company (BG&E), tendered for filing a service agreement for non-firm point-to-point transmission service between BG&E and CNG Power Services Corporation.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Baltimore Gas & Electric Company

[Docket No. ER97–1953–000]

Take notice that on March 5, 1997, Baltimore Gas & Electric Company (BG&E), tendered for filing a service agreement for non-firm point-to-point transmission service between BG&E and Wisconsin Electric Power Company.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Co.

[Docket No. ER97–2001–000]

Take notice that on February 21, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and East Kentucky Power Cooperative (EKPC) under LG&E's Rate Schedule GSS. LG&E had previously filed an unexecuted Service Agreement in this docket.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Long Island Lighting Company

[Docket No. ER97–2002–000]

Take notice that on March 3, 1997, Long Island Lighting Company (LILCO), filed Service Agreements for Non-Firm Point-to-Point Transmission Service between:

(1) LILCO and Public Service Electric and Gas Company (Transmission Customer);

(2) LILCO and Morgan Stanley Capital Group Inc. (Transmission Customer); and

(3) LILCO and Aquila Power Corporation (Transmission Customer).

These Service Agreements specify that the Transmission Customers have agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of February 14, 1997, for the Public Service Electric and Gas Company, Morgan Stanley Capital Group Inc., and Aquila Power Corporation Service Agreements. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customers.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company

[Docket No. ER97–2004–000]

Take notice that on March 10, 1997, Carolina Power & Light Company (CP&L), tendered for filing separate Service Agreements for Non-Firm Point to Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: Pennsylvania Power & Light Company; Citizens Lehman Power Sales; and Edison Source and a Service Agreement for Short-Term Firm Point to Point Transmission Service with Citizens Lehman Power Sales. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Northern States Power Company (Minnesota Company)

[Docket No. ER97–2005–000]

Take notice that on March 11, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and The Power Company of America, LP.

NSP requests that the Commission accept the agreement effective February 20, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company)

[Docket No. ER97–2007–000]

Take notice that on March 11, 1997, Northern States Power Company (Minnesota) (NSP) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Southern Energy Trading & Marketing, Inc.

NSP requests that the Commission accept the agreement effective February 19, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER97–2008–000]

Take notice that on March 11, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated February 24, 1997 (the Service Agreement) between Minnesota Power and Light Company (MP&L) and OVEC. OVEC proposes an effective date of February 24, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to MP&L.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

Copies of this filing were served upon the Minnesota Public Utilities Commission, the Wisconsin Public Service Commission and MP&L.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Co.

[Docket No. ER97–2009–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission

Service Agreement between LG&E and CNG Power Service Corporation under LG&E's Open Access Transmission Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Central Illinois Public Service Company

[Docket No. ER97–2010–000]

Take notice that on March 7, 1997, Central Illinois Public Service Company (CIPS submitted a Service Agreement dated January 31, 1997, establishing the Michigan Companies (Consumers Energy Company and The Detroit Edison Company) as a customer under the terms of CIPS' Coordination Sales Tariff CST–1 (CST–1 Tariff).

CIPS requests an effective date of February 5, 1997 for the service agreement and the revised Index of Customers. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon the new customer and the Illinois Commerce Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Montaup Electric Company

[Docket No. ER97–2011–000]

Take notice that on March 7, 1997, Montaup Electric Company (Montaup), filed 24 executed transmission service agreements with the following utilities, which, with two exceptions noted below, were filed in unexecuted form in Docket Nos. ER96–2380 and OA96–174 on July 9, 1996, with a request that the agreements be allowed to become effective on that date. Montaup requests that the executed service agreements be allowed to become effective on the dates shown below:

Customer	Requested effective date
1. Bangor Hydro-Electric Company.	July 9, 1996.
2. Braintree Electric Light Department.	July 9, 1996.
3. Central Maine Power Company.	July 9, 1996.
4. Citizens Lehman Power Sales.	July 9, 1996.
5. Connecticut Municipal Electric Energy Cooperative.	July 9, 1996.
6. Coastal Electric Services Company.	July 9, 1996.
7. Commonwealth Electric Company.	July 9, 1996.
8. Duke/Louis Dreyfus L.L.C.	July 9, 1996.
9. Duke/Louis Dreyfus Energy Services (New England) L.L.C.	July 9, 1996.
10. Electric Clearinghouse Incorporated.	July 9, 1996.
11. Green Mountain Power Corporation.	July 9, 1996.
12. InterCoast Power Marketing.	July 9, 1996.
13. KCS Power Marketing, Inc.	July 9, 1996.
14. Koch Power Services Incorporated.	July 9, 1996.
15. Maine Public Service Company.	July 9, 1996.
16. Middleborough Gas & Electric Department.	July 9, 1996.
17. Pascoag Fire District Electric Department.	July 9, 1996.
18. PECO Energy Company.	August 21, 1996.
19. Pittsfield Generating Company L.P.[1]	February 5, 1997
20. Plum Street Energy Marketing.[2]	February 5, 1997
21. Rainbow Energy Marketing Corporation.	July 9, 1996.
22. Taunton Municipal Lighting Plant.	July 9, 1996.
23. United Illuminating Company.	July 9, 1996.
24. Vermont Electric Power Company.	July 9, 1996.

[1] Not previously filed in unexecuted form.
[2] Not previously filed in unexecuted form.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Company of New Mexico

[Docket No. ER97–2012–000]

Take notice that on March 7, 1997, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements for service under the terms of PNM's Open Access Transmission Tariff with the following customers: Questar Energy Trading Company (2 agreements) and Delhi Energy Services, Inc. (2 agreements). PNM's filing also is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Carolina Power & Light Company

[Docket No. ER97–2013–000]

Take notice that on March 7, 1997, Carolina Power & Light Company (CP&L), tendered for filing separate unexecuted Service Agreements between CP&L and North Carolina Electric Membership Corporation (NCEMC) for Non-Firm Point-to-Point Transmission Service and for Short-Term Firm Point-to-Point Transmission Service. Service to NCEMC will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. PacifiCorp

[Docket No. ER97–2014–000]

Take notice that PacifiCorp on March 10, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, PacifiCorp's FERC Electric Tariff, Fourth Revised Volume No. 3. The Tariff has been revised to add provisions for delivery service for New York Mercantile Exchange COB and Palo Verde Electricity Futures Contracts to the types of service to be provided under the Tariff.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER97–2015–000]

Take notice that on March 10, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements with AYP Energy, Inc. and Illinova Power Marketing under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER97–2016–000]

Take notice that on March 10, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreements with Coastal Electric Services Company, Pacific Northwest Generating Cooperative, Questar Energy Trading Company and Snohomish County Public Utility District No. 1 under, PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon. 1

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Louisville Gas and Electric Co.

[Docket No. ER97–2017–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Indiana Municipal Power Agency under LG&E's Rate Schedule GSS. An unexecuted copy of this Service Agreement was originally filed in Docket No. ER97–1095–000.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. South Carolina Electric & Gas Company

[Docket No. ER97–2018–000]

Take notice that on March 10, 1997, South Carolina Electric & Gas Company tendered for filing its report for quarters ending September 30, 1996 and December 31, 1996 summarizing transactions under Negotiated Market Sales Tariffs for short-term service.

Comment date: April 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. North Atlantic Energy Corp.

[Docket No. ER97–2019–000]

Take notice that on March 11, 1997, North Atlantic Energy Corporation (North Atlantic), filed proposed changes to charges for decommissioning Seabrook Unit 1 to be collected under North Atlantic Federal Energy Regulatory Commission Rate Schedules Nos. 1 and 3. These charges are recovered under a formula rate that is not changed by the filing. The proposed adjustment in charges is necessitated by a ruling of the New Hampshire Nuclear Decommissioning Finance Committee adjusting the funding requirements for decommissioning Seabrook Unit 1.

North Atlantic has requested waiver of the notice and filing requirements to permit an effective date of January 1, 1997 for the adjusted charges.

Copies of this filing were served upon North Atlantic's jurisdictional customer and the New Hampshire Public Utilities Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Cinergy Services, Inc.

[Docket No. ER97–2020–000]

Take notice that on March 11, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement, dated March 1, 1997 between Cinergy, CG&E, PSI and WPS Energy Services, Inc. (WPS).

The Interchange Agreement provides for the following service between Cinergy and WPS.

1. Exhibit A—Power Sales by WPS
2. Exhibit B—Power Sales by Cinergy

Cinergy and WPS have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on WPS Energy Services, Inc., the Kentucky Public Service Commission, the Public Service Commission of Wisconsin, the Public Utilities Commission of ohio and the Indiana Utility Regulatory Commission.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Wisconsin Public Service Corporation

[Docket No. ER97–2021–000]

Take notice that on March 10, 1997, Wisconsin Public Service Corporation, tendered for filing an executed service agreement with The Power Company of America, LP, under its CS–1 Coordination Sales Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. San Diego Gas & Electric Company

[Docket No. ER97–2022–000]

Take notice that on March 10, 1997, San Diego Gas & Electric Company (SDG&E), tendered for filing an acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Sonat Power Marketing L.P. (Sonat).

SDG&E requests that the Commission allow the Agreement to become effective on the 15th of May 1997 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Sonat.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Louisville Gas and Electric Co.

[Docket No. ER97–2023–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Indiana Municipal Power Agency under LG&E's Open Access Transmission Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Louisville Gas and Electric Co.

[Docket No. ER97–2024–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Northern Indiana Public Service Company (NIPSCo) under LG&E's Open Access Transmission Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Louisville Gas and Electric Co.

[Docket No. ER97–2025–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and Hoosier Energy under LG&E's Open Access Transmission Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Co.

[Docket No. ER97–2026–000]

Take notice that on March 10, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement between LG&E and WPS Energy Services, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Duquesne Light Company

[Docket No. ER97–2027–000]

Take notice that on March 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated March 4, 1997 with Illinois Power Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Illinois Power Company as a customer under the Tariff. DLC requests an effective date of March 4, 1997 for the Service Agreement.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Duquesne Light Company

[Docket No. ER97–2028–000]

Take notice that on March 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated March 4, 1997 with Pennsylvania Power & Light Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Pennsylvania Power & Light Company as a customer under the Tariff. DLC requests an effective date of March 4, 1997 for the Service Agreement.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Duquesne Light Company

[Docket No. ER97–2029–000]

Take notice that on March 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated March 4, 1997 with Heartland Energy Services under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Heartland Energy Services as a customer under the Tariff. DLC requests an effective date of March 4, 1997 for the Service Agreement.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. Duquesne Light Company

[Docket No. ER97–2030–000]

Take notice that on March 10, 1997, Duquesne Light Company (DLC), filed a Service Agreement dated March 6, 1997 with Public Service Electric and Gas Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Public Service Electric and Gas Company as a customer under the Tariff. DLC requests an effective date of March 6, 1997 for the Service Agreement.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. Duke Power Company

[Docket Nos. ER97–2100 and SC97–5–000]

Take notice that on March 14, 1997, Duke Power Company (Duke) tendered for filing to the Federal Energy Regulatory Commission (FERC or Commission) an application to amend the Electric Power Contract between Duke and the Commissioners of Public Works of the City of Seneca and the City of Seneca, South Carolina (Seneca) dated April 28, 1971 (FERC Rate Schedule No. 263), to include a stranded cost provision.

In accordance with Section 205 of the Federal Power Act, 16 U.S.C. 824d(1994), Order No. 888, *Promoting Wholesale Competition Through Open-Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* FERC Stats. & Regs. [Regulations Preambles 1991–96] ¶31,036 (1996), and Section 35.26(c)(1)(v)(A) of the Commission's Regulations, Recovery of Stranded Costs by Public Utilities, 61 Fed. Reg. 21,692 (1996) (to be codified at 18 CFR 35.26), Duke's proposed amendment provides for Duke's recovery, through an exit fee, of costs that will be stranded as a result of Seneca's department, on May 14, 1997, as a wholesale requirements customer of Duke.

Comment date: April 21, 1997, in accordance with Standard Paragraph E at the end of this notice.

47. New England Power Company

[Docket No. OA97–127–000]

Take notice that on March 17, 1997, New England Power Company, on behalf of the NEES Companies, submitted an amendment to its Standards of Conduct filed pursuant to the requirements of Order No. 889 in this docket.

Comment date: April 9, 1997, in accordance with Standard Paragraph E at the end of this notice.

48. Carolina Power & Light Company

[Docket No. OA96–198–003]

Take notice that on February 28, 1997, Carolina Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

49. The United Illuminating Company

[Docket No. OA96–171–000]

Take notice that on February 18, 1997, The United Illuminating Company (UI) tendered for filing proposed changes to its Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4 (Tariff), as previously amended. In these changes, UI proposes to revise the Tariff to reflect the implementation of the open access transmission tariff filed by the participants in the New England Power Pool (NEPOOL Tariff) on December 31, 1996, and to comply with the Commission's directions in *Atlantic City Electric Co., et al.,* 77 FERC ¶61,144 (1996).

Pursuant to *Atlantic City,* the changes to comply with that order became effective on November 13, 1996. UI requests an effective date for the other changes of March 1, 1997, or such other date as the NEPOOL Tariff becomes effective. UI has therefore requested that the Commission waive its 60-day prior notice requirement. Copies of the filing were served upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–171–000 and upon Gary Zielanski, UI Power Marketing, Robert J. Murphy, Connecticut Department of Public Utility Control, and McCallum Enterprises I Limited Partnership.

Comment date: April 4, 1997, in accordance with Standard Paragraph E at the end of this notice.

50. Consumers Power Company, d/b/a Consumers Energy Company

[Docket No. OA97–560–000]

Take notice that on March 6, 1997, Consumers Power Company, d/b/a Consumers Energy Company, filed on behalf of itself and the other parties amendments to the following described Operating Agreements implementing the functional unbundling of such agreements, which amendments include the cancellation of certain rate schedules which form a portion of such agreements:

1. Operating Agreement among Consumers Power Company, The Detroit Edison Company and Northern Indiana Public Service Company, dated May 1, 1979.
2. Operating Agreement among Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company, dated March 1, 1966.
3. Operating Agreement among Consumers Power Company, The Detroit Edison Company and Indiana-Michigan Power Company, dated March 1, 1966.

Copies were served upon the Michigan Public Service Commission and interested parties.

Comment date: April 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–7846 Filed 3–27–97; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: March 21, 1997, 62 FR 13609.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 25, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company have been added to the Agenda scheduled for the March 25, 1997 meeting.

Item No.	Docket No. and company
CAG–4	RP97–260–000, ANR Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 97–8068 Filed 3–26–97; 11:47 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5804–1]

Collection of Quality Assurance Data on Acid Precipitation Sample Collection Sites in the NADP/NTN Networks; Agency Information Collection Activities: Proposed Collection of Environmental Data; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Collection of Quality Assurance Data on Acid Precipitation Sample Collection Sites in the NADP/NTN Networks for the EPA funded project entitled: Conduct Systems and Performance Surveys of Acid Precipitation Collection Sites in the NADP/NTN Networks (EPA ICR Number: 1798.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 27, 1997.

ADDRESSES: U.S. Environmental Protection Agency, Air Exposure Research Division/Field Operations Branch, Mail Drop 76, Research Triangle Park, NC 27711. Interested persons may obtain a copy of the ICR without charge by contacting the hereinafter named person.

FOR FURTHER INFORMATION CONTACT: Thomas A. Lumpkin, 919–541–3611; facsimile number: 919–541–3451; E–Mail: LUMPKIN.THOMAS@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those agencies or organizations which operate sample collection sites or sponsor operation of the sites in the NADP/NTN.

Title: Collection of Quality Assurance Data on Acid Precipitation Sample Collection Sites in the National Atmospheric Deposition Program/National Trends Network (NADP/NTN) (EPA ICR No. 1798.01).

Abstract: The following three reports will be used to gather and report information on site operations. 1) The Site Survey Report Form addresses the following eight areas of site operation: Site information, siting criteria, sample handling at the field site, the sample collector, the rain gauge, sample processing and documentation, conductivity and pH measurements, and recommendations and actions taken. 2) The Exit Report summarizes the areas listed for item 1, but in a much more concise form, and is left with the site operator. 3) The Systems and Performance Survey Questionnaire collects information about the area surrounding the site and the sample handling and maintenance procedures used by the operator. The information gathered on these forms will be provided to the NADP/NTN Quality Assurance Coordinator to document that network protocols are being followed. The information will also be used to produce an annual summary quality assurance report. Responses to the collection of information are voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond.

Burden Statement: The effort is estimated to cost $200,000 per year to cover labor costs (initiate survey, gather information, and equipment QA), capital/startup costs (purchase monitoring equipment and training), and operating and maintenance costs (reports, maintain records, equipment up-keep, and travel expenses). An average annual reporting burden of 2000 hours will be required. Approximately 100 responses per year are anticipated with an average burden of 20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 5, 1997.

Gary J. Foley,

Director, National Exposure Research Laboratory.

[FR Doc. 97–7950 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5804–4]

Agency Information Collection Activities Under OMB Review; Bioremediation Field Initiative Database System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before May 27, 1997.

ADDRESSES: Office of Research and Development, Center for Environmental Research Information, 26 West Martin Luther King Drive (Mailstop G75), Cincinnati, Ohio 45268.

FOR FURTHER INFORMATION CONTACT: Fran Kremer, phone (513) 569–7346, fax (513) 569–7585, email kremer.fran@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are involved in the use of innovative technologies at Superfund sites, such as state and local governments, businesses, and non-profit institutions.

Title: Request for Information for the Bioremediation Field Initiative Database Systems, EPA ICR No. 1672.02, OMB No. 2080–0048, expires 04/30/97.

Abstract: This is an ICR renewal for gathering information on the design, operation, and performance of biological treatment technologies from remediation experts and managers working at sites where biological treatment technologies are being tested or implemented. The authority for collecting information on innovative treatment technologies is described at Section 311 of the Superfund Amendments and Reauthorization Act, Section 8003 of the Resource Conservation and Recovery Act, Section 7001 of the Oil Pollution Act, and Section 10 of the Toxic Substance Control Act. The information will help the EPA to deploy innovative technologies more quickly at Superfund and other sites.

Selected respondents are asked to complete a two-part questionnaire. The first part requests general site information. The second part requests site-specific biotechnology information. Following the initial questionnaire, respondents receive follow-up questionnaires on a semi-annual basis to update the information already provided. EPA has also developed an easy-to-use PC-based version of the questionnaire which is currently in use. Respondents may utilize either the paper- or the PC-based questionnaire, whichever they prefer.

EPA compiles information from completed questionnaires into the Bioremediation Field Initiative computer database. EPA developed a software program called the Bioremediation in the Field Search System (BFSS) to search, view, and report information in the database. BFSS is available to the public via computerized bulletin boards and from Web sites. The Bioremediation Field Initiative database has also appeared in the Bioremediation in the Field bulletin, distributed to approximately 3,500 addressees who have registered for Bioremediation Field Initiative mailings.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/31/96 (Vol 61, No. 252, p. 69092); no comments were received.

The EPA would like to solicit comments to:

(I) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average .25 to 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Site remediation personnel.

Estimated Number of Respondents: 781.

Frequency of Response: semi-annual.

Estimated Total Annual Hour Burden: 1620 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1672.02 and OMB Control No. 2080–0048 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 24, 1997.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 97–7951 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–5478–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements filed March 17, 1997 through March 21, 1997, pursuant to 40 CFR 1506.9.

EIS No. 970092, Draft EIS, AFS, UT, Sheepherder Hill Sanitation Salvage Sale, Management of Selected

Vegetation Stands, Implementation, Uinta National Forest, Spanish Fork District, Nebo Management Area, Utah County, UT, *Due:* May 12, 1997, *Contact:* Mark Sensibaugh (801) 623–2735.

EIS No. 970093, Final EIS, NPS, WV, Gauley River National Recreation Area, Implementation, General Management Plan and Land Protection Plan, Nicholas and Fayette Counties, WV, *Due:* April 18, 1997, *Contact:* Linda Romola (303) 969–2413.

EIS No. 970094, Final EIS, GSA, CA, New San Francisco Federal Building Office Building Construction, Implementation, City and County of San Francisco, CA, *Due:* April 28, 1997, *Contact:* Ms. Jane Woo (415) 522–3477.

EIS No. 970095, Draft EIS, CGD, CA, CA–92/San Mateo Hayward Bridge, Improvements to the East Approach and the Trestle Portion of the bridge, Coast Guard Bridge Permit and COE Section 404 Permit, Alameda and San Mateo Counties, CA, *Due:* May 12, 1997, *Contact:* Wayne Till (510) 437–3514.

EIS No. 970096, Draft EIS, DOA, HI, Waimea-Paauilo Watershed Project, To Alleviate the Agricultural Water Shortage, Watershed Protection and Flood Prevention, COE Section 404 Permit, Hawaii County, HI, *Due:* May 15, 1997, *Contact:* Kenneth M. Kaneshiro (808) 541–2601.

EIS No. 970097, Draft EIS, AFS, WY, CO, Tie Camp Timber Sale, Harvesting Timber and Road Construction, Medicine Bow-Routt National Forest, Brush Creek/Hayden Ranger District, Carbon County, WY and Jackson County, CO, *Due:* May 12, 1997, *Contact:* Andy Cadenhead (307) 326–5258.

EIS No. 970098, Draft EIS, FHW, MO, MO–60 Transportation Improvements, Connecting Van Buren to Poplar Bluff (Job No. J9P0455Z), Funding and COE Section 404 Permit, Butter and Carter Counties, MO, *Due:* May 19, 1997, *Contact:* Donald Newmann (573) 636–7104.

EIS No. 970099, Draft EIS, AFS, MT, Tansy Ragwort Control Project, Implementation, Little Wolf Fire Area, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT, *Due:* May 14, 1997, *Contact:* Ken Meckel (406) 862–2508.

EIS No. 970100, Draft EIS, BLM, WY, Gillette South Coal Bed Methane Project, Approval of an Application for a Permit to Drill (APD), Powder River Basin, Buffalo Resource Area, Campbell County, WY, *Due:* May 12, 1997, *Contact:* Richard Zander (307) 684–1100.

EIS No. 970101, Draft EIS, UAF, CA, Programmatic EIS—McClellan Air Force Base (AFB) Disposal and Reuse Including Rezoning of the Main Base, Implementation, Federal Permits, Licenses or Entitlements, Sacramento County, CA, *Due:* May 12, 1997, *Contact:* Rick Solander (916) 943–0830 (Ext. 126).

EIS No. 970102, Final EIS, GSA, FL, 9300–9499 NW 41st Street Immigration and Naturalization Service Facility Consolidation, Development, Construction and Operation, Leasing, Dade County, FL, *Due:* April 28, 1997, *Contact:* Philip Youngberg (404) 331–1831.

EIS No. 970103, Final EIS, SFW, CA, Multiple Species Conservation Program (MSCP) Planning Area, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth, San Diego County, CA, *Due:* April 28, 1997, *Contact:* Mr. Gail Kobetich (619) 431–9440.

EIS No. 970104, Draft EIS, BLM, CA, Castle Mountain Mine Open Pit Heap Leach Gold Mine Expansion Project, Plan of Operations Modification and Mine and Reclamation Plans Amendment, Approvals, San Bernardino County, CA, *Due:* May 28, 1997, *Contact:* George R. Meckfessel (619) 326–7000.

EIS No. 970105, Final EIS, FRC, WI, Peshtigo River Multiple Hydroelectric Project, Six Existing Hydroelectric Projects Relicensing, Caldron Falls (FERC No. 2525), Sandstone Rapids (FERC No. 2546), High Falls (FERC No. 2595), Potato Rapids (FERC No. 2560), Johnson Falls (FERC No. 2522) and Peshtigo (FERC No. 2581), Oconto and Marinette Counties, WI, *Due:* April 28, 1997, *Contact:* Jim Haimes (202) 219–2780.

EIS No. 970106, Final EIS, NRC, NM, Crownpoint Uranium Solution Mining Project, Construction and Operation, Leasing and Licensing, McKinley County, NM, *Due:* April 28, 1997, *Contact:* Joe Holonich (301) 415–6643.

EIS No. 970107, Final EIS, NOA, NJ, Mullica River—Great Bay National Estuarine Research Reserve Establishment, Site Designation and Plan Implemention, Ocean, Atlantic and Burlington Counties, NJ, *Due:* April 28, 1997, *Contact:* Dolores Washington (301) 713–3132.

Dated: March 25, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–7957 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5478–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 10, 1997, through March 14, 1997, pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1996 (61 FR 15251).

Draft EISs

ERP No. D–COE–L28007–OR Rating EO2, Joe Ney and Upper Pony Creek Reservoirs Expansion Project, Municipal Water Supply, COE Section 10 and 404 Permit Issuance, Coos County, OR.

Summary: EPA expressed environmental concerns over the elimination of water conservation as an alternative to be considered in the EIS, as well as the minimal information provided regarding the water reuse and reclamation alternative. EPA also expressed concerns over potential impacts to high-quality wetland habitats.

ERP No. D–TVA–E39038–TN Rating EC2, Columbia Dam Component of the Duck River Project, Implementation, Use of Lands Acquired, Possible COE Section 404 Permit, Maury County, TN.

Summary: EPA had environmental concerns with the potential environmental impacts associated with the development alternatives.

Final EISs

ERP No. F–NOA–K90028–HI, Hawaiian Islands Humpback Whales and Their Habitat National Marine Sanctuary Management Plan, Implementation, Honolulu, Kauai and Maui Counties, HI.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: March 25, 1997.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 97–7958 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

March 24, 1997.

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 collection, 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 any 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 of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 27, 1997.

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.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0106.

Title: Section 43.61 Reports of Overseas Telecommunications Traffic.

Form No.: N/A.

Type of Review: Extension of an existing collection for which the Commission received emergency approval.

Respondents: Business or other For-Profit.

Number of Respondents: 40 respondents will file the semi-annual traffic report however there are a total of 248 respondents for this entire collection.

Estimated Time Per Response: 80 hours.

Total Annual Burden: 3,200 hours. This estimate is only for the semi-annual traffic report. The Commission requested comments on the remainder of the collection in 62 FR 5535 on February 6, 1997. We estimate that there will be on average, four equivalent countries in any given six-month reporting period for which carriers engaged in ''facilities resale,'' i.e., private line resellers must report their U.S. Outbound and inbound traffic originating or terminating over resold U.S. private lines. We also predict that there will be as many as ten respondents providing traffic to each of the four equivalent countries.

Needs and Uses: Two times a year, carriers engaged in ''facilities resale,'' i.e., private line resellers, must report their U.S. outbound and inbound traffic originating or terminating over resold U.S. private lines. This requirement applies for three years following a Commission (or International Bureau) finding that a particular country offers U.S. carriers ''equivalent'' opportunities for resale. We impose the reporting requirement in the Section 214 authorizations granted to private line resellers.

We must collect traffic reports from private line resellers on a semi-annual basis in addition to the annual reports required under § 43.61 of our rules so that the Commission and interested parties, including U.S. carriers themselves, can closely monitor the equivalency decision's impact on the U.S. settlements deficit resulting from the diversion of IMTS traffic to international private lines. If the U.S. net settlements deficit changes substantially to the detriment of U.S. consumers, we would have the necessary information to investigate the situation promptly. Also, the data will enhance the ability of both the Commission and interested parties to monitor for unauthorized resale of international private lines that are interconnected to the public switched network.

An emergency paperwork reduction analysis was submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA for: (1) This semi-annual reporting requirement; and (2) for amending Section 43.61 of the Commission's rules to require that carriers include the number of minutes of outbound and inbound traffic settled pursuant to each alternative settlement arrangements entered under § 64.1002 of the Commission's rules. Comment was requested for the inbound/outbound traffic data burden in the **Federal Register** on February 6, 1997 (62 FR 5535).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–7909 Filed 3–27–97; 8:45 am]

BILLING CODE 6712–01–P

[CC Docket No. 92–237]

FCC Announces Three Meetings of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice

SUMMARY: On March 24, 1997, the Commission released a public notice announcing the April 15, 1997, April 23, 1997, and May 14, 1997, meetings of the North American Numbering Council (NANC) and the Agenda for those meetings. The intended effect of this action is to make the public aware of the NANC's next three meetings and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418–2330. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION:

Released: March 24, 1997.

The North American Numbering Council (NANC) will hold its next three meetings on Tuesday, April 15, 1997, Wednesday, April 23, 1997 and Wednesday, May 14, 1997. All meetings will begin at 8:30 A.M. EST. The April 15th and May 14th meetings will be held at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC 20054. The meeting on Wednesday, April 23, 1997, will be held at the ANA Hotel, 2401 M Street, NW, Washington, DC. For the April 23rd meeting, Council members will be billed for meeting costs (room and microphones) subsequent to the meeting.

Agenda (All agendas are preliminary and subject to change):

The planned agenda for the April 15, 1997, meeting is as follows:

1. Approval of minutes of meeting of March 11, 1997. (8:30)
2. LNPA LLC responses to NANC information request. (8:35 to 10:00)
3. Recommendations of the LNPA Working Group. Review of the action items from the March 11 NANC meeting with input from the Legal Expertise Working Group. Discussion of process for achieving final recommendation to the Commission. (10:20 to Noon, 1:00 to 2:00)
4. Status report from CLC Ad Hoc Committee about NXX Exhaust Action Item. (2:00 to 2:30)
5. Status report from the NANPA Evaluation Team. (2:30 to 2:45)
6. Report of NANC Steering Group to include action item from March 11th NANC meeting (INC's relationship to NANC). (2:45 to 3:15)
7. Review report from INC concerning number pooling. (3:30 to 3:45)
8. Report from Stan Greer (Florida PSC) concerning issues surrounding 904 NPA. (3:45 to 4:00)
9. Presentation by Richard Bartel, *et al.*, regarding ''research on 7 vs 10-digit numbering, 555, and the Uniform National Dialing Plan (*i.e.*, INC Issue 020, resolved 1/97).'' (4:00 to 4:15)
10. Review of decisions reached and action items. (4:15 to 4:30)

The planned agenda for the April 23, 1997, meeting is as follows:

1. Finalization of recommendation of NANC to the FCC regarding Local Number Portability.
2. Presentation by Fred Gaechter regarding international numbering matters.
3. Update from NANPA Evaluation Team.

The planned agenda for the May 14, 1997, meeting is as follows:

1. Final Review of Recommendation for Selection of NANP Administrator.
2. Working Group Reports.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 97–7975 Filed 3–27–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1162–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1162–DR), dated March 2, 1997, and related determinations.

EFFECTIVE DATE: March 18, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 2, 1997:

The county of Baxter for Individual Assistance (already designated for Public Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7925 Filed 3–27–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1163–DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 19, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 4, 1997:

The counties of Bath, Bourbon, Bracken, Breckenridge, Bullitt, Carroll, Franklin, Hardin, Harrison, Jefferson, Lewis, Meade, Nelson, Oldham, Owen, Pendleton, Powell and Trimble for Categories C through G under the Public Assistance Program (already designated for Categories A and B under the Public Assistance Program, Individual Assistance and Hazard Mitigation).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7926 Filed 3–27–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1163–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kentucky (FEMA–1163-DR), dated March 4, 1997, and related determinations.

EFFECTIVE DATE: March 17, 1997.

FOR FURTHER INFORMATION CONTACT: Madga Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 1997, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Kentucky, resulting from severe storms, tornadoes, and flooding on March 1, 1997, and continuing, is of sufficient severity and magnitude that the provision of direct Federal assistance to ensure public health and safety is warranted under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my declaration of March 4, 1997 to authorize direct Federal assistance at 100 percent Federal funding for eligible debris removal costs for Pendleton County. Additional areas may be added at a later date, if requested and warranted.

Please notify the Governor of the State of Kentucky and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 97–7927 Filed 3–27–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1167–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1167–DR), dated March 7, 1997, and related determinations.

EFFECTIVE DATE: March 19, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 7, 1997:

The counties of Lake and Tipton for Individual Assistance, Hazard Mitigation, and Categories A and B under the Public Assistance program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 97–7924 Filed 3–27–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency information collection activities: Submission for OMB review; comment request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Board hereby gives notice that it has submitted to the Office of Management and Budget (OMB) on behalf of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Board (the Agencies) a request for review of the information collection system described below. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 28, 1997.

ADDRESSES: Comments, which should refer to the OMB control number, should be addressed to the OMB desk officer for the Board: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Comments should also be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that have been submitted to OMB for review and approval may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For Telecommunications Device for the Deaf (TDD) users only, Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to request approval from OMB of the extension for three years, without revision, of the following report:

1. Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Agency form number: FFIEC 019

OMB control number: 7100-0213

Frequency of response: Quarterly

Affected Public: U.S. branches and agencies of foreign banks

Number of respondents: 329

Estimated average hours per response: 10 hours

Estimated Annual reporting hours: 13,160 hours

General description of report: This information collection is mandatory: 12 U.S.C. 3105 and 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency). This information collection is given confidential treatment. (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The Agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No revisions are proposed to this information collection.

On November 5, 1996, the Board published a notice in the **FR** (61 FR 56960) describing in detail and inviting comment on the proposed extension of this collection of information. The Board did not receive any comments. This notice provides the public with the opportunity to obtain, review, and comment on, the Board's supporting statement.

Board of Governors of the Federal Reserve System, March 24, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–7901 Filed 3-27-97; 8:45 am]

BILLING CODE 6210-01-F

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of

Governors. Comments must be received not later than April April 11, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Helen Glendening, Pella, Iowa; to acquire 34.8 percent, and Harold A. and Ethel R. DeBruin, Pella, Iowa, to acquire 30.5 percent, of the voting shares of Leighton Investment Company, Leighton, Iowa, and thereby indirectly acquire Farmers Savings Banks, Leighton, Iowa.

Board of Governors of the Federal Reserve System, March 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–7902 Filed 3-27-97; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1997.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Covenant Bancorp, Inc., Haddonfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Covenant Bank, Haddonfield, New Jersey.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. AMCORE Financial, Inc., Rockford, Illinois; to acquire Country Bancshares Corporation, Mount Horeb, Wisconsin, and Belleville Bancshares Corporation, Belleville, Wisconsin, and thereby indirectly acquire State Bank of Mount Horeb, Mount Horeb, Wisconsin; Montello State Bank, Montello, Wisconsin; State Bank of Argyle, Argyle, Wisconsin; Citizens State Bank, Clinton, Wisconsin; and Belleville State Bank, Belleville, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Kentucky Home Bancshares, Inc., Bardstown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Kentucky Home Bank, Bardstown, Kentucky (a proposed *de novo* bank).

2. First Commercial Corporation, Little Rock, Arkansas; to merge with First Central Corporation, Searcy, Arkansas, and thereby indirectly acquire First National Bank, Searcy, Arkansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Medina Bankshares, Inc., D'Hanis, Texas; to become a bank holding company by acquiring 100 percent of the votings ahres of Medina Financial, Inc., Carson City, Nevada, and thereby indirectly acquire D'Hanis State Bank, D'Hanis, Texas.

In connection with this application, Medina Financial, Inc., Carson City, Nevada, has also applied to become a bank holding company.

Board of Governors of the Federal Reserve System, March 24, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–7903 Filed 3-27-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 2, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst 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: March 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–8055 Filed 03–26–97; 11:03 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: Regional Support Division (PMR), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0021, Profit and Loss Statement—Operating Statement. This form is used by offerors submitting proposals to perform GSA food service contracts.

DATES: Comments due May 27, 1997.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Streets NW, Washington, DC 20405.

ANNUAL REPORTING BURDEN: Respondents: 250; annual responses: 250; average hours per response: 1; burden hours: 250.

FOR FURTHER INFORMATION CONTACT: Deborah Purdie, (202) 501–4226.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: March 20, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–7939 Filed 3–27–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0026]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specification monographs in the fourth edition and on proposed new specification monographs. New monographs for certain substances used as food ingredients and additions, revisions, and corrections to current monographs are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material is expected to be presented in the next publication of the Food Chemicals Codex (the first supplement to the fourth edition), scheduled for publication in late summer 1997.

DATES: Written comments by May 12, 1997. (The committee advises that comments received after this date may not be considered for the first supplement to the fourth edition. Comments received too late for consideration for the first supplement will be considered for later supplements.)

ADDRESSES: Submit written comments and supporting data and documentation to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the new monographs and proposed revisions to current monographs may be obtained upon written request from NAS (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests for copies should specify the monographs desired by name. New and revised monographs may also be obtained through the Internet at http://www2.nas.edu/codex.

FOR FURTHER INFORMATION CONTACT: Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with NAS/IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of December 3, 1996 (61 FR 64098), FDA last announced that the committee was considering additional new monographs and a number of monograph revisions for inclusion in the first supplement to the fourth edition of the Food Chemicals Codex, which is scheduled for publication in late summer, 1997. The fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in March 1996. It is now available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet http://www.nap.edu) 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055.

FDA now gives notice that the committee is soliciting comments and information on additional proposed new monographs and proposed changes to certain current monographs. These new monographs and changes are also expected to be published in the first supplement to the fourth edition of the Food Chemicals Codex. Copies of the proposed new monographs and revisions to current monographs may be obtained upon written request from NAS at the address listed above or through the internet at http://www2.nas.edu/codex.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs or monograph revisions into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the proposed new monographs (3) and revisions of current monographs (8) listed below:

I. Proposed New Monographs

Manganese Citrate
Olestra
Vitamin K

II. Current Monographs to Which the Committee Proposes to Make Revisions

Acid Hydrolysates of Proteins (add new limit tests for 3-chloropropane-1,2-diol and 1,3- dichloro-2-propanol; correct limit tests for potassium and sodium)
Calcium Chloride (change description)
Calcium Chloride Solution (reduce lead limit)
Glycerol Ester of Partially Dimerized Rosin (change softening point test procedure)
Hydroxylated Lecithin (reduce heavy metals and lead limits)
Iron, Reduced (revise arsenic specification)
Lecithin (change description, add labeling requirement, increase acid value limit, reduce heavy metals and lead limits, and revise peroxide value limit for enzyme-modified material)
Phosphoric Acid (increase heavy metals limit, add lead requirement)

Interested persons may, on or before May 12, 1997, submit to NAS written comments regarding the monographs listed in this notice. Timely submission will ensure that comments are considered for the first supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the first supplement, but will be considered for subsequent supplements. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs listed in this notice are to be submitted to NAS (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. NAS will

forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 20, 1997.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–7836 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95P–0110]

Prescription Drug Advertising and Promotional Labeling; Development and Use of FDA Guidance Documents; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: As part of ongoing efforts initiated by the Food and Drug Administration (FDA) in March 1996 to ensure meaningful public participation in the guidance document development process, FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) is requesting public comment on guidance documents relating to prescription drug advertising and labeling. DDMAC has identified three general types of guidance documents on which it is seeking public comment. Specifically, DDMAC is requesting public comment on the rescission of guidances identified by DDMAC as obsolete, the revision and reissuance of DDMAC guidances that address current issues, and currently proposed guidance documents and suggestions of topics for new guidances that DDMAC may develop.

DATES: Written comments by June 26, 1997.

ADDRESSES: Submit written requests for copies of the guidances under review by DDMAC to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the guidances or related issues to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one. Comments should be identified with the docket number found in brackets in the heading of this document. Copies of the guidances under review by DDMAC are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828, e–mail: ''moncavage@cder.fda.gov.''

SUPPLEMENTARY INFORMATION: Issues relating to FDA's development and issuance of guidance documents were raised in a citizen petition submitted by the Indiana Medical Devices Manufacturers Council, Inc. (IMDMC) (see Docket No. 95P–0110). The IMDMC petition requested that FDA control the initiation, development, and issuance of guidance documents by written procedures that ensure the appropriate level of meaningful public participation. In response to the petition, FDA agreed to take steps to improve the agency's guidance document procedures.

In the **Federal Register** of March 7, 1996 (61 FR 9181), FDA published a notice that set forth its proposal on how best to improve its guidance document procedures and solicited comment on these and additional ideas for improvement (March 1996 notice). On April 26, 1996, the agency held a public meeting to discuss these issues further. The comment period for the March 7 notice closed on June 5, 1996. In the **Federal Register** of February 27, 1997 (62 FR 8961), FDA published a notice explaining how the agency will proceed in the future with guidance document development, issuance, and use. The notice included the agency document entitled ''Good Guidance Practices'' (the GGP's document), which sets forth the agency's policies and procedures for developing, issuing, and using guidance documents.

In the GGP's document, the agency defines ''guidance documents'' to include documents prepared for FDA staff, applicants and sponsors, and the public that: (1) Relate to the processing, content, and evaluation and approval of submissions; (2) relate to the design, production, manufacturing, and testing of regulated products; (3) describe the agency's policy and regulatory approach to an issue; or (4) establish inspection and enforcement policies and procedures. ''Guidance documents'' do not include documents relating to internal FDA procedures, agency reports, general information documents provided to consumers, speeches, journal articles and editorials, media interviews, press materials, warning letters, or other communications directed to individual persons or firms.

Guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. Rather, they explain the agency's current thinking on a certain subject. However, a company affected by a guidance may use an alternative approach if the alternative approach satisfies the requirements of the applicable statute, regulations, or both. A guidance document cannot itself be the basis for an enforcement action.

FDA has adopted a two-level approach to the development of guidance documents. The procedures for developing a guidance document will depend on whether that guidance document is a ''level 1'' guidance or a ''level 2'' guidance. Level 1 guidance documents generally include guidance that sets forth first interpretations of statutory or regulatory requirements, changes in interpretation or policy that are of more than a minor nature, unusually complex scientific issues, or highly controversial issues. Level 1 guidance documents are directed primarily to applicants or sponsors or other members of the regulated industry. Level 2 guidance documents include all other guidance documents. In general, the agency will solicit public comment during the development of level 1 guidance documents. For level 2 guidance documents, the agency may choose to solicit comment before implementing a guidance, but in general an opportunity for public comment will be provided upon issuance of the guidance document. (See FDA GGP's.)

The agency also is making efforts to keep the public up to date on the status of agency guidance development and to provide the public an opportunity to suggest possible topics for document development or revision.

DDMAC guidances on achieving compliance with the prescription drug advertising and labeling statutes and regulations have been issued to the pharmaceutical industry since 1970 in various forms, often as letters or guidance papers. As a result of FDA's GGP effort, DDMAC has decided to reissue its guidance documents in a standardized format and grouped by common topic, such as content, format, class of drugs, or how to interact with DDMAC. To that end, DDMAC is undertaking a review of all such guidances to determine the following: (1) Which guidances are obsolete; (2) which guidances address current issues, but may need revision; and (3) whether there are new topics on which DDMAC should develop guidance documents. Once the guidance review process is completed, new and reissued DDMAC guidances will be made available, in

paper and electronic format, as they are completed.

DDMAC also has examined systematically its guidance development process and is implementing changes to ensure meaningful public participation in its guidance development process. DDMAC is seeking public comment on the following three types of guidance documents: List 1 contains DDMAC guidance documents that have been, or will be, rescinded because they are obsolete; List 2 contains DDMAC guidance documents (level 1 and level 2) that address current issues, but that may need some revision before they are reissued; and List 3 contains suggestions for guidance documents DDMAC may develop to address current prescription drug advertising and labeling issues.

Interested persons may, on or before June 26, 1997, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Anyone with general comments, concerns, or questions about DDMAC guidance documents may submit their comments at any time to the Dockets Management Branch.

I. List 1—DDMAC Guidance Documents Considered Obsolete

List 1 contains the titles and dates of all guidance documents on prescription drug advertising and labeling that have been reviewed by DDMAC and that have been rescinded or will be rescinded by this document because they are obsolete; some may have been superseded by subsequent policies, and some are being revised and will be reissued as described in List 2 of this notice. The guidances are listed in chronological order, and a description of the original guidance is included with a statement explaining its status. Guidances in this list that were superseded by subsequent guidances or are being revised are cross-referenced to the proposed revised guidances in Lists 2 and 3. For example, the letter dated June 27, 1970, in List 1 is cross-referenced to the proposed revised guidance in List 2.D.4 ''Oral Contraceptive Products—Differentiation Claims.'' Guidances in List 1 that are being revised in new guidances will remain in effect until the revised guidance is published in final form.

Although it may be rescinding a guidance on a specific issue at this time, the agency may consider the need to reissue a guidance on that issue. Therefore, DDMAC welcomes comments on the rescission, or future rescission, of the guidances in List 1 and encourages parties to submit their comments to the Dockets Management Branch (address above).

1. Letter dated June 27, 1970—This letter to oral contraceptive manufacturers objected to attempts to differentiate products based on alleged thromboembolic risk with higher estrogen levels. This risk theory was based on information described as ''British data.'' This guidance was superseded by guidances dated June 19, 1991, and January 31, 1992, in this list. These latter guidances will be incorporated into 2.D.4, ''Oral Contraceptive Products—Differentiation Claims.''

2. Statement dated March 18, 1971—This statement to all manufacturers of antibiotic drugs addressed the use of in vitro data to support claims that an antibiotic is bactericidal. This guidance was superseded by the guidance dated September 1994 in this list. The latter guidance will be incorporated into guidance 2.D.2, ''Anti-infective Drug Products.''

3. Guidance dated 1971—This guidance to all manufacturers of psychotropic drugs requested firms to stop the use of claims suggesting the use of these products for everyday anxieties. This guidance was revised in the July 25, 1985, guidance in this list, which was later rescinded.

4. Guidance dated October 8, 1974—This guidance from Commissioner Schmidt to Synapse Communication Services stated that educational material and programs could be considered labeling. This guidance will be combined with the ''Sabshin criteria'' guidance, May 22, 1975, in this list, to create 2.A.6, ''Scientific and Educational Materials—Criteria for Independence.''

5. Guidance dated May 22, 1975—This guidance detailed criteria to be considered when judging the independence of a publication for determination of labeling status. These criteria are commonly called the ''Sabshin criteria.'' This guidance will be combined with the guidance dated October 8, 1974, of this list, to create 2.A.6, ''Scientific and Educational Materials—Criteria for Independence.''

6. Letter dated October 6, 1975—This letter to all manufacturers of radiopharmaceutical products advised of the applicability of the advertising and labeling regulations to the promotion of radiopharmaceutical products. This guidance was issued at the time that these products first came under the prescription drug requirements. Because it is now generally understood that radiopharmaceuticals are prescription drugs, this guidance is rescinded.

7. Guidance dated February 11, 1977—This guidance on the acceptability of claims of quality control procedures in reminder promotion was primarily intended for generic drug manufacturers. Since the inception of the generic drug rating system, generic drug manufacturers have been able to use the ratings in FDA's *Approved Drug Products* publication to reflect the status of their products. Therefore, this guidance is rescinded.

8. Guidance dated February 14, 1977—This second guidance to radiopharmaceutical product manufacturers advised them of the prescription status of their products and the applicability of FDA regulations. Because it is now generally understood that radiopharmaceuticals are prescription drugs, this guidance is rescinded.

9. Guidance dated June 28, 1978—This guidance addressed boxed warnings in brief summaries for estrogen products. The warnings addressed the increased risks of endometrial carcinoma and use in pregnancy. When this guidance was issued, these products had new boxed warnings in their labeling. Because the warning information is now routinely included in all advertising, this guidance is rescinded.

10. Guidance dated early 1980's—This guidance presented conditions under which an industry press release will not be considered labeling. This guidance will be combined with the guidance in this list dated July 24, 1991, on video news releases to create 2.A.5, ''Print and Video News Releases.''

11. Guidance dated early 1980's—This guidance stated conditions under which the dissemination of sole-sponsored publications by or on behalf of the drug sponsor would not be regulated as labeling. The guidance will be revised to create 2.A.7, ''Single-Sponsored Publications—Criteria for Independence.''

12. Guidance dated April 6, 1981—This guidance to all manufacturers of estrogen products addressed claims for the use of estrogen products for vasomotor symptoms and other symptoms of menopause. Because the products have been approved for these uses, this guidance is rescinded.

13. Guidance dated June 16, 1981—This guidance to all manufacturers of

oral contraceptives addressed the use of the results of the ''Walnut Creek Study'' in claims of lowered side-effect risk. FDA's position was that the study did not support any changes in the risk information at that time. Because the study is no longer used in promotion, this guidance is rescinded.

14. Guidance dated April 22, 1982—This guidance addressed the agency's position regarding responses to solicited and unsolicited requests for drug product information. The guidance will be incorporated into guidance 2.A.8, ''Solicited and Unsolicited Requests for Information.''

15. Guidance dated July 6, 1982—This guidance to industry addressed the scientific support necessary for comparative advertising disseminated by or on behalf of the drug sponsor. This guidance will be combined with the guidances in this list dated October 27, 1988, and February 22, 1994, to create 2.A.1, ''Comparative Promotional Materials.''

16. Guidance dated July 21, 1982—This guidance to all manufacturers of purified insulin products addressed claims of superiority based on the purification of the product by removing, for example, pro-insulin and animal proteins. With the development of recombinant deoxyribonucleic acid (DNA) human insulins, the promotion issue is no longer relevant to these products. Therefore, this guidance is rescinded.

17. Guidance dated July 22, 1982—This guidance to industry addressed limitations on and formats for advertising not-yet-approved drug products. This document was superseded by guidances in this list dated August 1985, August 1986, and April 1994.

18. Guidance dated August 10, 1982—This guidance to all manufacturers of sustained-release theophylline products addressed the use of pharmacokinetic and biopharmaceutic data to support clinical claims. Because those claims are no longer used to differentiate products, this guidance is rescinded.

19. Guidance dated November 10, 1982—This guidance to all advertisers of benzodiazepine products addressed clinical claims supported by nonclinical or pharmacokinetic data. This guidance was superseded by a guidance in this list dated July 25, 1985.

20. Memorandum dated March 15, 1983—This memorandum from the Division of Drug Monographs to manufacturers described data and calculations needed to support claims of zero-order kinetics with clinical implications. Because issues of constant absorption and product differentiation are no longer used in promotion, this guidance is rescinded.

21. Letter dated September 19, 1983—This letter to manufacturers of nitroglycerin patches provided summary wording regarding the less-than-effective status of those products. The summary was to be used in place of the Drug Efficacy Study Investigation statement wording required in the regulations. This guidance will be revised to create 2.D.6, ''Transdermal Nitroglycerin Products.''

22. Guidance dated December 30, 1983—This guidance to manufacturers of once-daily theophylline products addressed submission of promotional material. This guidance was effective for only 6 months and, therefore, is rescinded.

23. Letter dated February 16, 1984—This letter to all manufacturers of oral contraceptives concerned a study by Pike et al. (published in *Lancet*) and discussed relative potencies of progestins; it could not be used as the basis for promotional claims. Because this study is no longer used in promotion, this guidance is rescinded.

24. Guidance dated December 20, 1984—This guidance to all manufacturers of antimicrobial and antimycotic agents detailed how the terms: ''Clinical cure, bacteriological cure, and improvement'' were to be used and defined in promotion. This guidance was later clarified in the February 27, 1986, document in this list. Both of these documents will be revised and combined with the March 18, 1971, guidance document in this list on antimicrobial and antimycotic promotion to create 2.D.2, ''Anti-infective Drug Products.''

25. Letter dated July 25, 1985—This letter to all manufacturers of benzodiazepine products concerned certain promotional statements. This guidance revised the 1971 guidance in this list on psychotropic drugs. Because these products are no longer promoted using such statements, this guidance is rescinded.

26. Guidance dated August 1985—This guidance was addressed to the industry on preapproval promotion. This guidance was superseded by a guidance dated August 1986 and two guidances dated April 1994 in this list.

27. Guidance dated September 1985—This guidance to the industry described what FDA would view as institutional, corporate, or health messages. This guidance was revised in a guidance in this list dated June 6, 1988. The concepts in these guidances will be revised to create 2.A.4, ''Institutional and Help-Seeking Advertisements,'' and 2.C.3, ''Preapproval Promotion.''

28. Guidance dated September 1985—This guidance to the industry addressed the use of overprinting of images or promotional phrases over the brief summary wording. This guidance will be slightly revised to create 2.B.2, ''Overprinting of Images or Promotional Phrases.''

29. Guidance dated February 27, 1986—This guidance to industry clarified the December 20, 1984, guidance on antimicrobial drug promotion. This guidance will be revised and combined with the March 18, 1971, guidance in this list concerning antibiotic and antimycotic promotion to create 2.D.2, ''Anti-infective Drug Products.''

30. Letter dated May 2, 1986—This letter to manufacturers of oral contraceptive products specified that patient booklets should contain the approved patient package insert as a permanent part of the booklet. Because the principles regarding labeling requirements are well established with this product class, this guidance is rescinded.

31. Guidance dated August 1986—This guidance to industry consolidated and added provisions to the July 22, 1982, and September 1985 guidances in this list regarding preapproval promotion disseminated by or on behalf of the drug sponsor. The August 1986 guidance specified formats for preapproval drug promotion. The guidance was later superseded by two documents, both dated April 1994, and described later in List 1.

32. Guidance dated December 1987—This guidance to the industry noted that proposed revisions to the investigational new drug regulations could affect the preapproval promotion guidance documents previously issued. Because the content of the guidance went through notice-and-comment rulemaking and was codified in the Code of Federal Regulations (21 CFR 312.7), this guidance is rescinded.

33. Guidance dated March 1988—This guidance described the process for the review of proposed material to be relied on by industry as official agency action. This guidance was superseded by the document dated July 1993, in List 1.

34. Guidance dated June 6, 1988—This guidance to industry revised the September 1985 guidance concerning institutional and disease-oriented promotional messages. The concepts in this guidance will be revised and incorporated into 2.A.4, ''Institutional and Help-Seeking Advertisements,'' and 2.C.3, ''Preapproval Promotion.''

35. Letter dated October 27, 1988—This letter was addressed to industry with attached excerpts from a speech

describing the criteria for comparative promotional claims. This guidance has been revised and will be combined with documents dated July 7, 1982, and February 22, 1994, in this list to create 2.A.1, ''Comparative Promotional Materials.''

36. Letter dated January 19, 1990—This letter to all manufacturers of transdermal nitroglycerin products concerned the inclusion of a double-boxed warning from the approved labeling in the brief summaries. This guidance was applicable for 6 months and, therefore, is rescinded.

37. Letter dated June 19, 1991—This letter to all manufacturers of oral contraceptives discussed the use of claims of hormonal activity to differentiate products. The guidance also recommended against consumer advertising. A guidance dated January 31, 1992, rescinded the recommendation against consumer advertising. The remaining guidance topics will be revised to create 2.D.4, ''Oral Contraceptive Products—Differentiation Claims.''

38. Guidance dated July 24, 1991—This guidance to all manufacturers stated that video news releases would be considered labeling and should be submitted under the provisions of 21 CFR 314.81. This guidance will be revised to create 2.A.5, ''Print and Video News Releases.''

39. Letter dated January 31, 1992—This letter to all manufacturers of oral contraceptives clarified the June 19, 1991, letter in this list and removed the recommendation against consumer promotion. This document will be revised and combined with other guidance documents concerning oral contraceptive promotion to create 2.D.4, ''Oral Contraceptive Products—Differentiation Claims.''

40. Letter dated February 13, 1992—This letter to nicotine transdermal system manufacturers addressed promotional concepts and information and considerations for reminder messages to consumers. This guidance was revised and will be combined with the September 11, 1992, guidance in this list to create 2.D.5, ''Transdermal Nicotine Products.''

41. Guidance dated June 5, 1992—This guidance to all manufacturers of aerosol inhalation steroid products stated that a caution statement should be included in all promotion. The guidance will be slightly revised to create 2.D.1, ''Aerosol Steroid Safety Information.''

42. Letter dated June 22, 1992—This letter to all manufacturers of ionic and nonionic contrast media discussed the need to use data to substantiate certain claims that were used to differentiate products. This guidance will be slightly revised to create 2.D.3, ''Ionic and Nonionic Contrast Media.''

43. Letter dated September 11, 1992—This letter to all nicotine transdermal system manufacturers outlined critical points regarding advertisements and promotional material. This guidance will be revised and combined with the February 13, 1992, guidance in this list to create 2.D.5, ''Transdermal Nicotine Products.''

44. Letter dated May 20, 1993—This letter to industry listed product exhibits and programs naming products in program books for professional meetings. In light of the current format in program books, this guidance is rescinded.

45. Guidance dated July 1993, ''Current Issues and Procedures''—This guidance addressed six topics. The topics in this document will be separated, and new single-topic guidances will be created or will be combined with other guidances with similar topics into new guidances. The new documents that will be created from these six topics follow:

a. Issues relating to filing submissions with DDMAC will be addressed in 2.C.2, ''Filing Requirements and Other Communication for Advertising and Labeling.''

b. Issues relating to communicating with DDMAC by facsimile and letter will be addressed in 2.C.2, ''Filing Requirements and Other Communication for Advertising and Labeling.''

c. Issues relating to submitting foreign language material will be addressed in 2.C.1, ''Data on File and Foreign Language Publications References.''

d. Issues regarding submitting proposed direct-to-consumer advertising will be addressed in 3.2, ''Direct-to-Consumer Promotion.''

e. Issues regarding electronic material will be addressed in 2.C.2, ''Filing Requirements and Other Communication for Advertising and Labeling.''

f. Issues dealing with launch campaigns will be addressed in 2.C.4, ''Prepublication Review of Promotional Materials.''

46. Guidance dated July 1993—This guidance to industry revised and reissued the March 1988 guidance on submission of material for prepublication review and comment. This guidance will be combined with the launch campaign topic in the preceding July 1993 guidance and the March 1994 guidance in List 1 to create 2.C.4, ''Prepublication Review of Promotional Materials.''

47. Guidance dated August 1993—This guidance to industry clarified the requirements for telephone advertisements. This guidance will be revised in 2.A.9, ''Telephone Advertisements.''

48. Guidance dated February 22, 1994—This guidance to industry addressed comparative efficacy claims for nonsteroidal anti-inflammatory drugs and equally prominent information on adverse effects. This guidance will be revised and combined with the July 6, 1982, and October 27, 1988, guidances and the pertinent topic in the April 1994 ''Current Issues and Procedures'' guidance in this list to create 2.A.1, ''Comparative Promotional Materials.''

49. Guidance dated March 1994—This guidance to industry addressed the submission of proposed launch promotional material for review. This guidance will be combined with topics in the July 1993 ''Current Issues and Procedures'' and the other July 1993 guidance in this list to create 2.C.4, ''Prepublication Review of Promotional Materials.''

50. Guidance dated April 1994—This guidance to industry addressed promotion of products prior to approval, which superseded the August 1986 document. This guidance will be combined with the following April 1994 guidance, part a., to create 2.C.3, ''Preapproval Promotion.''

51. ''Current Issues and Procedures'' guidance dated April 1994—This guidance to industry covered 10 topics. The topics in this guidance will be separated, and new single-topic guidances will be created or will be combined with other guidances with similar topics into revised guidances. The revised guidances that will be created from these 10 topics follow:

a. Preapproval promotion issues will be addressed in 2.C.3, ''Preapproval Promotion.''

b. Issues related to brand and generic name presentation will be addressed in 2.B.3, ''Placement of Brand and Established Names in Promotional Materials.''

c. Broadcast advertisement issues will be addressed in 2.B.4, ''Prominence of Risk Information in Broadcast Advertisements.''

d. Issues related to comparative claims will be addressed in 2.A.1, ''Comparative Promotional Materials.''

e. Direct-to-consumer promotion issues will be be reconsidered in 3.2, ''Direct-to-Consumer Promotion.''

f. Fair balance issues will be addressed in 2.B.1, ''Fair Balance.''

g. Issues related to formulary kits will be addressed in 2.A.2, ''Formulary Kits as Promotional Labeling.''

h. Issues related to generic drug advertisements will be addressed in 2.A.3, ''Generic Drug Promotional Labeling and Advertising.''

i. Issues related to unsolicited information will be addressed in 2.A.8, ''Solicited and Unsolicited Requests for Information.''

j. Wrap-around advertisement issues will be addressed in 2.B.5, ''Wrap-Around Advertisements.''

k. Issues related to ''Data on file'' references will be addressed in 2.C.1, ''Data on File and Foreign Language Publications References.''

52. Letter dated September 1994—This letter for anti-infective drug product manufacturers addressed several advertising claims including the use of in vitro data, comparative claims, cost-effectiveness claims, presentation of indications, and use of pharmacokinetic data. This guidance will be revised and combined with the March 18, 1971, December 20, 1984, and February 27, 1986, guidances in this list concerning antibiotic promotion to create 2.D.2, ''Anti-infective Drug Products.''

II. List 2—Guidances That Address Current Issues, But Require Revision

List 2 contains guidance documents that will be revised and reissued as part of DDMAC's review of its prescription drug advertising and labeling guidances. Documents mentioned in List 1 are referenced. For example, 1.51, refers to List 1, document 51, the April 1994 guidance entitled ''Current Issues and Procedures.'' To simplify their presentation, guidances in List 2 have been grouped into the following general topics: A—Content of Promotional Materials; B—Format of Promotional Materials; C—Procedures for Interacting with DDMAC; and D—Issues Related to Product or Class. In some cases, a guidance may address issues under more than one topic. Guidances are listed in alphabetical order under each topic.

A. Content of Promotional Materials

1. ''Comparative Promotional Materials''—This guidance to industry will combine and revise 1.15, 1.35, 1.48, and 1.51.d. These guidances discussed comparative promotional claims for a variety of drug products.

2. ''Formulary Kits as Promotional Labeling''—This guidance to industry will revise 1.51.g, which discusses formulary kits as labeling. The revised guidance will also be considered in 3.7, a guidance being developed regarding promotion to managed care organizations.

3. ''Generic Drug Promotional Labeling and Advertising''—This guidance to industry will be based on the pertinent subject in 1.51.h. The guidance will explain the use of the terms ''AB rated'' and ''bioequivalent'' in promotional materials and price catalogs.

4. ''Institutional and Help-Seeking Advertisements''—This guidance to industry will be based on appropriate parts of 1.27 and 1.34. It will combine the concepts of institutional and disease-oriented advertising, especially as they pertain to consumers.

5. ''Print and Video News Releases''—This guidance to industry will combine and revise 1.10 and 1.38 to address under what circumstances press kits, new releases, and video news releases will be considered labeling.

6. ''Scientific and Educational Materials—Criteria For Independence''—This guidance to industry will combine 1.4 and 1.5. The guidance will discuss the criteria to be considered when judging the independence of scientific and educational publications, materials, and programs for determination of labeling status.

7. ''Single-Sponsored Publications—Criteria for Independence''—This guidance to industry will revise 1.11 to address when sole-sponsored publications will not be considered labeling.

8. ''Solicited and Unsolicited Requests for Information''—This guidance to industry will revise 1.14 and 1.51.i to address when distribution of product information by or on behalf of the drug sponsor will not be considered labeling.

9. ''Telephone Advertisements''—This guidance to industry will revise 1.47 concerning telephone advertisements. The guidance will address telephone advertisements and the regulations for broadcast advertising.

B. Format of Promotional Materials

1. ''Fair Balance''—This guidance to industry will revise the pertinent part of 1.51.f. The guidance will discuss the placement and relative prominence of fair balance information.

2. ''Overprinting of Images or Promotional Phrases''—This guidance to industry will be based on 1.28, which discusses the use of printing images or promotional phrases over the brief summary.

3. ''Placement of Brand and Established Names in Promotional Materials''—This guidance to industry will revise the part of 1.51.b that addresses issues related to type size and intervening matter between the brand and established names, as discussed in the regulations.

4. ''Prominence of Risk Information in Broadcast Advertisements''—This guidance to industry will revise the pertinent part of 1.51.c. The guidance will discuss graphics, sound effects, voice-overs, etc., that occur during the presentation of risk information in broadcast advertisements and that obscure or detract from risk information.

5. ''Wrap-Around Advertisements''—This guidance to industry will revise the pertinent part of 1.51.j regarding advertisements to be used on the front and back covers of a publication.

C. Procedures for Interacting with DDMAC

1. ''Data on File and Foreign Language Publications References''—This guidance to industry will revise the pertinent parts of 1.45.c and 1.51.k regarding how to submit these reference materials to the agency.

2. ''Filing Requirements and Other Communication for Advertising and Labeling''—This guidance to industry will revise the pertinent parts of 1.45.a, 1.45.b, and 1.45.e regarding how and where to file advertising and labeling pieces.

3. ''Preapproval Promotion''—This guidance to industry will combine and revise 1.34, 1.50, and 1.51.a. The guidance will address methods for regulated companies to provide certain information about their products prior to approval.

4. ''Prepublication Review of Promotional Materials''—This guidance to industry will combine and revise previous documents that addressed prepublication review of launch campaign materials and other promotional materials. The guidances that will be combined and revised include 1.45.f, 1.46, and 1.49.

D. Issues Related to Product or Class

1. ''Aerosol Steroid Safety Information''—This guidance to industry will revise 1.41, and will advise manufacturers of aerosol inhalation steroid products to use a caution statement in promotion.

2. ''Anti-infective Drug Products''—This guidance to industry will combine and revise 1.2, 1.24, 1.29, and 1.52 and include new issues in antibiotic promotion.

3. ''Ionic and Nonionic Contrast Media''—This guidance to industry will be based on 1.42, dated June 22, 1992, outlining certain claims for ionic and nonionic contrast media made by or on behalf of the drug sponsor that are used

to differentiate products, but that will no longer be acceptable without data substantiating the claim.

4. ''Oral Contraceptive Products—Differentiation Claims''—This guidance to industry will combine and revise 1.1, 1.37, and 1.39 regarding promotional claims that attempt to differentiate oral contraceptive products.

5. ''Transdermal Nicotine Products''—This guidance to industry will combine and revise 1.40 and 1.43 regarding the appropriate characterization of nicotine products and their use for smoking cessation.

6. ''Transdermal Nitroglycerin Products''—This guidance to industry will be based on 1.21 regarding the wording to be used in the boxed warnings for these products.

III. List 3—Currently Proposed Guidance Documents and Suggestions for New Guidances That DDMAC Should Develop

List 3 of this document contains proposed topics that are, or may be, the subject of future DDMAC guidance documents. An important component of public comment consists of the public's suggestions for when guidance is needed and what the agency's priorities should be. DDMAC therefore welcomes: (1) Comments on the topics listed below, (2) requests for additional topics for guidance related to prescription drug advertising and promotional labeling, and (3) comments on the order in which the topics should be addressed. Once comments have been received, guidance documents will be developed as agency resources permit. When guidance documents become available for public review and comment, the agency will announce their availability in the **Federal Register**. The following proposed topics are listed in alphabetical order:

1. ''Accelerated Approval''—FDA intends to develop a guidance on the submission of promotional materials for products approved under subpart H of 21 CFR part 314. (See § 314.550, *Promotional Materials*.)

2. ''Direct-to-Consumer Promotion''—FDA is developing a guidance to industry on direct-to-consumer promotion of regulated products. FDA held a public hearing and sought written public comment on this topic in 1995. In the **Federal Register** of May 14, 1996 (61 FR 24314), FDA published a document on one issue pertaining to direct-to-consumer promotion and requested comments to clarify certain other issues. The comment period closed August 12, 1996.

3. ''Drug Product Promotion at International Meetings Held in the United States''—FDA is developing a guidance to industry to address issues regarding drug product promotion at international meetings held in the United States.

4. ''Infomercial''—FDA is considering the development of a guidance to industry concerning television infomercials.

5. ''Information About Investigational Drugs''—FDA is developing guidance on 21 CFR 312.7 regarding the dissemination of press releases by sponsors, or on their behalf, containing information concerning investigational drugs.

6. ''Promotion on the Internet''—FDA is identifying issues to be addressed in a guidance document about this new promotional medium. FDA held a public meeting on this issue on October 16 and 17, 1996, and also sought written comments. This meeting was announced in the **Federal Register** of September 16, 1996 (61 FR 48707).

7. ''Promotion to Managed Care Organizations''—FDA is developing a guidance to industry regarding marketing, pharmacoeconomic claims, and information exchange in managed care environments. FDA held a public hearing and sought written public comment on this in 1995.

Dated: March 21, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–7911 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket Nos. 95P–0262 and 96P–0317]

Citizen Petitions Concerning Therapeutic Equivalency Ratings Between Tablets and Capsules; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments on two citizen petitions that ask the agency to revise its current policy concerning therapeutic equivalency ratings between tablets and capsules. The petitions propose that a tablet and a capsule containing the same active ingredient in the same dosage strength that have been demonstrated to be bioequivalent be listed as therapeutic equivalents in the publication ''Approved Drug Products with Therapeutic Equivalence Evaluations.'' FDA is seeking public comment in order to assist the agency in deciding whether to revise its current policy.

DATES: Submit written comments by June 26, 1997.

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: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5644.

SUPPLEMENTARY INFORMATION: The publication ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (the Orange Book) identifies drug products approved on the basis of safety and effectiveness by FDA under the Federal Food, Drug, and Cosmetic Act. The Orange Book also contains therapeutic equivalence evaluations for approved multisource prescription drug products. These evaluations are prepared to serve as public information and advice to State health agencies, prescribers, and pharmacists, to promote public education in the area of drug product selection, and to foster containment of health costs.

For two drug products to be listed as therapeutically equivalent in the Orange Book, the products, among other criteria, must be pharmaceutical equivalents. FDA regulations define pharmaceutical equivalents as follows:

> Pharmaceutical equivalents means drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, in identical dosage forms, but not necessarily containing the same inactive ingredients, and that meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

(see 21 CFR 320.1(c))

Tablets and capsules containing the same active ingredient in the same dosage strength are defined as pharmaceutical alternatives rather than pharmaceutical equivalents. Pharmaceutical alternatives are defined as follows:

> Pharmaceutical alternatives means drug products that contain the identical therapeutic moiety, or its precursor, but not necessarily in the same amount or dosage form or as the same salt or ester. Each such drug product individually meets either the identical or its own respective compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

(see 21 CFR 320.1(d))

Pharmaceutical equivalents and pharmaceutical alternatives are defined similarly in the Orange Book. Under these definitions, a tablet and a capsule cannot be rated as therapeutic equivalents in the Orange Book even if they have been demonstrated to be bioequivalent.

FDA has received two citizen petitions asking the agency to revise the current policy that does not permit tablets and capsules to be rated as therapeutically equivalent. Kleinfeld, Kaplan and Becker (Kaplan) submitted a petition dated August 11, 1995, that asks FDA to take the following actions: (1) Revise the Orange Book to specify therapeutic equivalence evaluations for products that contain the same active ingredient, but are in a different solid oral dosage form (i.e., tablets and capsules); (2) change the Orange Book designations ''Tablet, Oral'' and ''Capsule, Oral,'' to ''Solid, Oral''; and (3) change the definitions of ''Pharmaceutical equivalents'' and ''Pharmaceutical alternatives'' in FDA's regulations in 21 CFR 320.1(c) and (d) and in the Orange Book to accommodate the requested changes. The petition suggests, as an alternative, that FDA could rule that tablets and capsules are the same dosage form (i.e., solid oral) and are thus pharmaceutical equivalents. Under the latter approach, grant of a suitability petition (under section 505(j)(2)(C) of the act (21 U.S.C. 355(j)(2)(C)) and 21 CFR 314.93) would not be a prerequisite for FDA to approve a tablet form of a capsule product, or vice versa.

The National Association of Pharmaceutical Manufacturers (NAPM) submitted a citizen petition dated August 27, 1996, requesting that ''FDA deem all solid oral dosage form drug products (e.g., tablets and capsules) as the same dosage form, which, upon a showing of bioequivalence, will be considered in all respects to be 'pharmaceutical equivalents.''' NAPM argues that tablets and capsules are ''more properly regarded as a single dosage form, i.e., solid oral dosage forms.'' Both petitions assert that there is no scientific basis for distinguishing between tablets and capsules that have been demonstrated to be bioequivalent.

Recently, the issue of whether tablets and capsules can be listed in the Orange Book as therapeutically equivalent has taken on added significance. Some innovator firms, whose period of marketing protection (either through patent or exclusivity) is about to expire, have succeeded in delaying generic competition by, for example, voluntarily withdrawing the new drug application (NDA) for the tablet formulation of a product and submitting a second NDA for the drug product in capsule form. In such a case, if there are already filed abbreviated new drug applications (ANDA's) for the tablet product, these ANDA's cannot be approved immediately upon expiration of the innovator's period of market protection. Before these ANDA's can be approved, an interested party must file a petition asking the agency to determine whether the innovator product was withdrawn for reasons of safety or effectiveness. The agency must then determine that the product was not withdrawn for these reasons, publish that determination, and relist the product in the Orange Book. Even after a withdrawn product has been relisted in this way, generic competition may still be affected. For example, if physicians continue to write prescriptions by brand name rather than by generic name, substitution of the generic *tablet* for the brand name *capsule* may not be permitted under the applicable State drug product selection statute.

FDA is soliciting public comment on the two citizen petitions discussed above. Among the questions the agency would particularly like to see addressed are the following:

1. Should any potential change in current FDA policy be limited to permitting bioequivalent tablets and capsules to be listed as therapeutic equivalents in the Orange Book, or should FDA regard tablets and capsules as the same (i.e., solid oral) dosage form?

2. What would be the implications of regarding all tablets and capsules as the same dosage form?

3. Is there a sound scientific basis for the current distinction between tablets and capsules?

4. What would be the impact on patients of rating bioequivalent tablets and capsules as therapeutically equivalent, or of adopting the term ''solid oral'' as a dosage form? Are there reasons for some patients or health care practitioners to prefer either tablets or capsules?

5. How would listing tablets and capsules as therapeutic equivalents in the Orange Book affect current substitution practices under State drug product selection statutes? What would be the impact on drug selection by formularies?

6. What would be the economic impact of various proposed changes?

7. How would FDA action in this area relate to United States Pharmacopoeia (USP) monographs?

Interested persons may, on or before June 26, 1996, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments are to be identified with the docket numbers found in brackets in the heading of this document. The NAPM and Kaplan petitions and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Copies of the citizen petitions may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Dated: March 21, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–7912 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

(1965, 2649, 5011A–U6, 5011B–U6)

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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Hearing—Part B Medicare Claim, 42 CFR 405.821; *Form No.:* HCFA–1965; *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with any determination and amount of benefit paid. This form is used so that a party may request a hearing by a Hearing Officer because the review

determination failed to satisfy the appellant. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individual or Households, and Not for profit institutions; *Number of Respondents:* 55,000; *Total Annual Hours:* 9,167.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Reconsideration of Part A Insurance Benefits, 42 CFR 405.711; *Form No.:* HCFA–2649; *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's Part A determination or the amount paid. This form is used by a party to request a reconsideration of the initial determination. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individuals or Households, and Not for profit institutions; *Number of Respondents:* 62,000; *Total Annual Hours:* 15,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Part A Medicare Hearing by an Administrative Law Judge, 42 CFR 498.40; *Form No.:* HCFA–5011A–U6; *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's Part A determination or the amount paid. This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge if the reconsideration determination fails to satisfy the appellant. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individuals or Households, and Not for profit institutions; *Number of Respondents:* 10,000; *Total Annual Hours:* 2,500.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Part B Medicare Hearing by an Administrative Law Judge; *Form No.:* HCFA–5011B–U6; *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the carrier's Part B determination or the amount paid. This form is used by the beneficiary or other qualified appellant to request a hearing by an Administrative Law Judge if the hearing officer's decision fails to satisfy the appellant. *Frequency:* Annually, Quarterly and Monthly; *Affected Public:* Individuals or Households, and Not for profit institutions; *Number of Respondents:* 10,000; *Total Annual Hours:* 2,500.

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: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 19, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources.

[FR Doc. 97–7892 Filed 3–27–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 35, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: AIDS Drug Assistance Program [ADAP]: Monthly Client Utilization and Program Expenditure Assessment Project—NEW

State AIDS Drug Assistance Programs [ADAP], funded under Title II of the Ryan White Comprehensive AIDS Resources Emergency [CARE] Act Amendments of 1996 [Pub. L. 104–146], are designed to provide low income, uninsured, and underinsured individuals with access to HIV/AIDS medications that prevent serious deterioration of health arising from HIV disease, including prevention and treatment of opportunistic diseases.

Due to the increasing need for pharmaceuticals among uninsured and underinsured low-income individuals who are HIV+ or diagnosed with AIDS, and recognizing the importance of program planning and budget forecasting to maximize resources, the Division of HIV Services [DHS], Health Resources and Services Administration [HRSA], proposes to collect relevant client utilization data and program expenditure information on a voluntary monthly reporting basis from State ADAPs. This effort is designed to assist Title II grantees, State ADAPs, the DHS/HRSA funding agency staff, and policy makers at both the federal and State level to better understand the level of client need for medications that the programs are functioning under and the resources used to meet the needs, and to provide indicators of where future action may be required and the most appropriate response(s).

A report is proposed that will collect time-specific data for the number of enrolled clients, the number of clients served, the level of funding expended, and the prices of five to seven specified pharmaceuticals dispensed by each program. In addition, the report will provide a forum for tracking the most current changes in each State ADAP with respect to available funding, eligibility criteria, clinical guidelines, and formulary changes. The individual State reports will be compiled into summary reports and distributed back to grantees and State ADAPs on a monthly basis, as well as available for use by HRSA and the Office of Management and Budget. These results will be used to guide program planning, to formulate budget recommendations, and to monitor the balance between available resources and State needs. The burden estimates are as follows:

Type of respondent	No. of respondents	Responses per respondent	Hours per response	Total burden hours
Title II ADAP Grantees	54	12	1	648

Send comments to Patricia Royston, HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 17, 1997.

J. Henry Montes,

Director, Officer of Policy and Information Coordination.

[FR Doc. 97–7842 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Loan Information System Records for the DHHS and DHUD Hospital Mortgage Insurance, Guarantee, and Direct Loan Programs (OMB No. 0915–0174)—Extension, No Change

The Division of Facilities Loans within the Health Resources and Services Administration monitors outstanding direct and guaranteed loans made under Section 621 of Title VI and Section 1601 of Title XVI of the Public Health Service Act, as well as loans insured under the Section 242 Hospital Mortgage Insurance Program of the Fair Housing Act. These programs were designed to aid construction and modernization of health care facilities by increasing the access of facilities to capital through the assumption of the mortgage credit risk by the Federal Government.

Operating statistics and financial information are collected annually from hospitals with mortgages that are insured under these programs. The information is used to monitor the financial stability of the hospitals to protect the Federal investment in these facilities. The form used for the data collection is the Hospital Facility Data Abstract. No changes in the form are proposed. The estimate of annual burden hours is as follows:

Form	No. of respondents	Responses per respondents	Hours per response	Total hour burden
Hospital Facility Data Abstract	250 hospitals	1	1	250

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 11, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–7837 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR 124, Subpart H) (OMB No. 0915–0099)—Extension, No Change

The regulation known as ''Federal Right of Recovery and Waiver of Recovery'' provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Title VI or XVI is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs, and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

The estimated burden is as follows:

Regulation	Number of respondents	×	Responses per respondent	×	Hours per response	×	Total burden hours
124.704(b) and 707	20		1		3		60

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 12, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–7840 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–M

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Black Lung Clinic Program Guidelines (42 CFR 55a) (OMB No. 0915–0081) Extension/No Change

The purpose of the Black Lung Clinics Program (BLCP) is to stimulate and encourage local public and private agencies to improve the health status of coalworkers and to increase coordination with other programs to assist the coalworkers population. The goal of the BLCP is to provide services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the functional status, i.e., ''quality of life'', of the miner and reduce economic costs associated with morbidity and mortality arising from pulmonary diseases.

This request is for approval of the application requirements which are included in the program guidelines and the program regulations (42 CFR 55a.201 and 55a.301). Grantees must submit applications annually for continued grant support. The regulations outline the requirements for grant applications for States (55a.201) and for entities other than States (55a.301). The program guidelines further elaborate on these requirements.

As a result of a routine review of the program regulations for compliance with the new provisions of the Paperwork Reduction Act (PRA) of 1995, it was determined by HRSA and confirmed by OMB that other previously cleared regulatory requirements were not subject to OMB review under the PRA. Those sections of the regulations have been deleted from this request.

The grant application form is cleared under another OMB approval (OMB No. 0937–0189). The burden for completing the application is not reflected in the Black Lung clearance request because the burden is reported in the clearance of the application form.

The current request for clearance includes one hour of burden, to keep the clearance of the program-specific application requirements on the OMB database.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 11, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–7841 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

AIDS Education and Training Centers Program: National Program and Service Record Data Reporting Form (OMB No. 0915–0154)—Extension, No Change

Under section 2692(a) of the Public Health Service Act, information on training programs and training participants is obtained from 15 AIDS Education Training Centers (ETCs) currently operating in health professions schools and academic health science centers. The goal of the AIDS ETC program is to increase the number of health care providers who are effectively educated and motivated to counsel, diagnose, treat and manage individuals with HIV infection and to assist in the prevention of high risk behaviors which may lead to infection. The National Program and Service Record Data Reporting (NPSR) Form is used by ETCs to provide standardized reporting of project activities for Federal program monitoring. The burden estimates are as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
NPSR	15	2	84	2,520

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 12, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–7843 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for the Community Scholarship Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of available funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $290,000 under section 338L of the Public Health Service (PHS) Act for competing and project period renewal Grants to States for Community Scholarship Programs (CSP).

The purpose of the CSP is to enable States to increase the availability of primary health care in urban and rural federally designated health professional shortage areas (HPSAs) by assisting community organizations to provide scholarships for the education of individuals to serve as health professionals in these communities.

The PHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity. This grant program is related to the objectives of improving access to and availability of primary health care services for all Americans, especially the underserved populations. 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 number 202–783–3238).

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

DUE DATES: Applications are due May 15, 1997. Applications will be considered to have met the deadline if they are (1) received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a receipt from a commercial carrier. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant.

ADDRESS: Application materials may be obtained from, and completed applications should be returned to: Mr. Lawrence R. Poole, Acting Grants Management Officer, Bureau of Primary Health Care (BPHC), 4350 East-West Highway, 11th Floor, Bethesda, Maryland 20814, (301) 594–4250. The Grants Management staff is available to provide assistance on business management issues. Applications for these grants will be made on PHS Form 5161–1 with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937–0189.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Sharley L. Chen, Division of Scholarships and Loan Repayments, BPHC, HRSA, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, at (301) 594–4400.

SUPPLEMENTARY INFORMATION: In FY 1997, approximately $290,000 will be awarded for 11–12 new and competing continuation grants ranging from $5,000 to $100,000 for a 12-month budget period and up to a 3-year project period. Under this program, States enter into agreements with public or private nonprofit community organizations located in federally designated HPSAs. These organizations will recruit qualified residents of their communities and provide scholarships to them to become physicians, certified nurse practitioners, certified nurse midwives, or physician assistants based on the needs of the communities.

This grant program is intended to be consistent with the efforts of the National Health Service Corps (NHSC) Scholarship Program, NHSC Loan Repayment Program and NHSC State Loan Repayment Programs to meet the needs of underserved populations in federally designated HPSAs through the placement of primary care practitioners. For purposes of this program, the term ''primary health care'' means health services regarding family medicine, general internal medicine, general pediatrics, or obstetrics and gynecology, that are provided by physicians, certified nurse practitioners, certified nurse midwives, or physician assistants. The Secretary is required by statute (Section 338L(l)(3) of the PHS Act) to ensure that, to the extent practicable, not less than 50 percent of the amount appropriated will be in the aggregate expended by the States for making grants to community organizations that are located in rural federally designated HPSAs.

Eligibility Requirements

In order for a State to receive a grant under this program, the State must:

1. Receive funding for at least one grant, cooperative agreement, or contract under any provisions of the PHS Act other than section 338L for the fiscal year for which the State is applying;

2. Agree that the grant program will be administered directly by a single State agency;

3. Agree to make grants to community organizations located in federally designated HPSAs in order to assist those community organizations in providing scholarships to individuals enrolled or accepted for enrollment as full-time students in health profession schools approved by the Secretary of Health and Human Services for purposes of the CSP;

4. Agree that 40 percent of the total costs of the scholarships will be paid from the Federal grant made to the State; and

5. Agree that 60 percent of the total costs of the scholarships will be paid from non-Federal contributions made in cash by the State and the community organization through which the scholarship is provided.

a. The State must make available through these cash contributions not less than 15 percent nor more than 25 percent of the scholarship costs.

b. The community organization must make available through these cash contributions not less than 35 percent nor more than 45 percent of the scholarship costs.

c. Non-Federal contributions provided in cash by the State and community organization (as described in a and b above) may not include any amounts provided by the Federal Government to the State, or community organization involved, or to any other entity. Non-Federal contributions required may be provided directly by the State and community organization involved, and may be provided through donations from public and private entities. States should be aware, however, that donations from providers may be subject to provisions of Public Law 102–234, the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991.

Scholarship Requirements

To receive a grant, the State must agree that it will award a grant to a community organization for scholarships only if:

1. The individual who is to receive the scholarship under a contract is a resident of a federally designated HPSA

in which the community organization is located and will provide primary health care services for:

a. A number of years equal to the number of years for which the scholarship is provided, or for a period of 2 years, whichever period is greater; or

b. Such greater period of time as the individual and the community organization may agree.

2. The individual agrees, while enrolled in a health professions school as a full-time student, to maintain an acceptable level of academic standing at the school (as determined by the school in accordance with regulations issued by the Secretary pursuant to section 338A (f)(1)(B) (iii) of the PHS Act);

3. The individual and the community organization agree that the scholarship:

a. Will be expended only for tuition expenses, other reasonable educational expenses, reasonable living expenses incurred while in attendance at the school, and payment to the individual of a monthly stipend of not more than the amount authorized for NHSC scholarship recipients under section 338A(g)(1)(B) of the PHS Act; and

b. Will not, for any year of such attendance for which the scholarship is provided, be in an amount exceeding the total amount required for the year for the purposes indicated in paragraph (a) above.

4. The individual agrees to meet the educational and certification or licensure requirements necessary to become a primary care physician, certified nurse practitioner, certified nurse midwife, or physician assistant in the State in which the individual is to practice under the contract; and,

5. The individual agrees that, in providing primary health care pursuant to the scholarship, he/she:

a. Will not, in the case of an individual seeking care, discriminate on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the programs established in Titles XVIII (Medicare) or XIX (Medicaid) of the Social Security Act; and,

b. Will accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under Part B of Title XVIII, and will enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under Title XIX to provide service to individuals entitled to medical assistance under the plan.

Evaluation Criteria

For new and competing continuation grants the following criteria will be used to evaluate applications: (a) The appropriateness of the description and documentation of the State's need for the grant; (b) The adequacy of the State's methodology for selecting community organizations to participate in the grant and the overall impact that the community organizations' participation will have on addressing the State's primary health care health professional needs; (c) The extent to which the State's and community's recruitment plans are consistent with the State's plans for meeting the needs of the community's primary care system; (d) The appropriateness and documentation of community commitment with the grant; (e) The extent to which the CSP will coordinate with other State programs designed to alleviate need in HPSAs; (f) The appropriateness of the State's plan to administer and manage the grant, including the credentials of the employees to be involved and their relevant program experience; (g) The adequacy of the State's proposed procedure for monitoring the scholar's fulfillment or breach of the CSP contract; (h) The appropriateness of the State's plans for providing waivers and suspensions; (i) The soundness of the budget and the budget justification for assuring effective utilization of grant funds; (j) The adequacy of a State's assurance that sufficient contributions are available; (k) The reasonableness of the scholarship levels proposed given the cost of health professions programs and the anticipated State and community resources for scholarship funding; (l) The adequacy of the description of the State's proposed ratio and costs of scholarships for both urban and rural federally designated HPSAs; and (m) The validity, reliability, and methodological soundness of the State applicant's internal monitoring and evaluation plan for grants.

Other Grant Information

The CSP is subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package for this program will include a list of States with review systems and the single point of contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. The due date for State process recommendations is 60 days after the application deadline. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after that date. Grants will be administered in accordance with HHS regulations in 45 CFR part 92. The OMB Catalog of Federal Domestic Assistance number for this program is 93.931.

Dated: March 24, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–7844 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds To Provide Technical and Non-Financial Assistance to Federally Funded Migrant Health Centers on Environmental and Occupational Health Services for Migrant and Seasonal Farmworkers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds, CFDA #: 93.129.

SUMMARY: The Health Resources and Services Administration (HRSA) anticipates that approximately $305,000 will be available in FY 1997 to support two cooperative agreements for the purpose of providing technical and non-financial assistance to Migrant Health Centers (MHCs) receiving funding under Section 330(g) of the Public Health Service (PHS) Act. These cooperative agreements will provide environmental and occupational health services to migrant and seasonal farmworkers (MSFWs) and their families. These cooperative agreements will be awarded under section 330(k) of the PHS Act (42 U.S.C. 254b(k)) with a budget period of one year and a project period of up to three years.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priorities. These cooperative agreements are related to the objectives cited for special populations, particularly socio-economically depressed minorities and other underserved populations, which constitute a significant portion of the migrant and seasonal farmworker (MSFW) population. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People*

2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202/783–3238). Applicants should also request copies of the Recommendations of the National Advisory Council on Migrant Health through the Migrant Health Program (MHP), Bureau of Primary Health Care, 4350 East/West Hwy., Bethesda, MD 20814.

The PHS strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

DATES: Applications are due April 28, 1997. Applications will be considered to have met the deadline if they are: (1) Received on/or before the deadline date; or (2) postmarked on/or before the deadline date and received in time for submission to the review committee. 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 are not acceptable as proof of timely mailing. Faxed copies of applications will not be accepted. Applications not received in time to be considered for review will not be considered for funding.

ADDRESSES: Application kits (PHS form 5161–1 with revised face sheets DHHS Form 424, as approved by the Office of Management and Budget (OMB) under control number 0937—0189), may be obtained from: HRSA Grants Application Center, Suite 100, 40 W. Gude Drive, Rockville, MD 20850. The telephone number is toll-free 1–888–300–HRSA (4772). The e-mail address is HRSA.GAC@IX.NETCOM.COM. Completed applications for awards for the provision of technical and other non-financial assistance to MHCs must be sent to: HRSA Grants Application Center at the above address. For information on grants management issues, please contact the Grants Management Specialist, Nancy Benson, at 301/594–4232.

FOR FURTHER INFORMATION CONTACT: For general program information and information about these technical assistance funds, contact Jack Egan, Deputy Director, MHP, 4350 East-West Highway, Room 7–4A2, Bethesda, MD 20814, (301) 594–4303 (JEGAN@HRSA.DHHS.GOV) or Susan Hagler at the same address and phone number (SHAGLER@HRSA.DHHS.GOV).

SUPPLEMENTARY INFORMATION: One cooperative agreement of up to $260,000 will be for a national resource center on environmental and occupational health issues concerning farmworkers. This resource center will respond to MHC requests for information and support in the following areas: (1) The promotion, development, and implementation of environmental and occupational health services for migrant and seasonal farmworkers, such as the detection and alleviation of unhealthful conditions, accident prevention, including pesticide exposures, and infection and parasitic disease screening and control; and (2) the development of migrant health center specific patient and provider educational and guidance materials and technical publications for farmworkers and growers, which are culturally and linguistically appropriate.

The recipient will provide technical assistance and contracts to BPHC funded Migrant Health Centers and Programs in order to alleviate and correct conditions among migrant and seasonal farmworkers and their families. This assistance should be provided in the following areas: (1) Field sanitation; (2) safe drinking water; (3) housing; (4) rodent and parasitic infestation; (5) solid waste disposal; (6) sewage treatment; and (7) other environmental areas related to health.

Examples of the technical assistance to be provided in addressing these problems include: (a) Well water testing, (b) outreach to educate growers and farmworkers on the importance of safe drinking water and handwashing facilities and proper usage procedures to prevent environmentally induced illness, (c) assistance to migrant health centers by providing expert advice on local, State, and federal laws and regulations, and (d) referral to sources of private and public funding which may be available to improve housing and environmental health conditions for migrant farmworkers.

The other cooperative agreement of up to $45,000 will be used for a national resource center that will focus its technical assistance and training on changes to the Worker Protection Standards designed to protect agricultural workers from pesticide risks. In addition, the grantee will provide environmental and occupational health and safety information for farmworkers. Technical assistance and training will be provided for MHC employees at national migrant health conferences and forums, enabling the staff to stay up to date on environmental/occupational health issues in the following areas: (1) Workers' Compensation Coverage for farmworkers in the 50 states and Puerto Rico; (2) the Environmental Protection Agency's Worker Protection Standards; (3) changes in legislation that will affect farmworkers' access to health care; and (4) environmental/occupational health issues that impact farmworkers.

Eligible Applicants

Eligible applicants for the technical assistance cooperative agreement are public and private nonprofit entities.

Criteria for Evaluating Applications

Applications will be evaluated and rated on the applicant's ability to meet the following criteria:

(1) The extent to which the applicant demonstrates an adequate understanding of the environmental/occupational health needs of MSFWs;

(2) The extent to which the applicant demonstrates a capability to serve as a resource to federally funded Migrant Health Centers/Projects to maximize collaboration, and identify and integrate resources in assisting farmworkers in addressing their environmental and occupational health needs;

(3) Experience of the proposed project personnel in working with migrant farmworker environmental/occupational health issues;

(4) The adequacy and appropriateness of the proposed work plan with project approaches that will support the initiation or completion of specific environmental health activities in local, State, and regional areas served by migrant health centers;

(5) The adequacy and appropriateness of the proposed work plan in addressing specific Migrant Health Program priorities and focusing on the outcomes as well as the methodology to be employed;

(6) Appropriateness and reasonableness of proposed budget and staffing;

(7) Adequacy of the proposal to evaluate the outcomes of the activities proposed;

(8) The number of entities to be served by the applicant; and

(9) The extent to which the applicant demonstrates the capability to insure that the personnel, training, programs, materials and curricula are culturally and linguistically appropriate.

Federal Responsibilities Under Cooperative Agreements

Federal responsibilities under the cooperative agreement, in addition to the usual monitoring and technical assistance, will include: (1) Participation in the development and approval of an initial workplan, in accord with changing events in government policies and in the environmental/occupational health care environment, and modification thereof, as appropriate; (2) consultation and cooperation with the recipient regarding the recipient's preparation and dissemination of materials; (3) approval of specific studies and projects; and (4) participation in the design, planning, setting target task completion dates and final approval of work plans for activities under the cooperative agreement, including the selection of migrant health centers which will receive technical and non-financial assistance.

Other Award Information

These awards are not subject to the provision of Executive Order 12372 or the Public Health System Reporting Requirement.

Dated: March 24, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–7839 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

Availability of Funds for the National Health Service Corps Loan Repayment Program

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1997 for awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (Section 338B of the Public Health Service (PHS) Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC LRP. The HRSA estimates that approximately 664 NHSC Loan Repayment awards (465 new awards and 199 extension awards) totaling $37 million will be made to health professionals providing primary health services.

The PHS is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting health priority areas. These programs will contribute to the *Healthy People 2000* objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report, Stock No. 017–001–00474–01) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202–783–3238).

PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

ADDRESSES: Application materials may be obtained by calling or writing to: National Health Service Corps Loan Repayment Program, 2070 Chain Bridge Road, Suite 450, Vienna, Virginia 22182–2536, 1–800–221–9393 or (703) 821–8955. Completed applications must be returned to: Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, (301) 594–4400. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is 301–594–4981. Applicants for the NHSC LRP will use HRSA Form 873 approved under Office of Management and Budget (OMB) Number 0915–0127.

DATES: The deadline for applications is June 30, 1997, or until all appropriated funds have been obligated, whichever occurs first. Due to limited funding, it is anticipated that all appropriated funds will be obligated prior to June 30, 1997. The volume of applications is historically three times greater than the number of contracts that can be awarded. Therefore, to receive consideration for funding, health professionals must submit an application and proof of a job offer at an approved NHSC LRP Service Site.

Applications will be considered to be on time if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: For further program information and technical assistance, please contact Sharley L. Chen, Chief, Loan Repayment Programs Branch, HRSA/BPHC/DSLR, at the above address, phone or FAX number.

SUPPLEMENTARY INFORMATION: Section 338B of the PHS Act (42 U.S.C. 254l–1) authorizes the Secretary to establish the NHSC LRP to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in federally designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, general internal medicine, general pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC LRP, the Secretary will repay qualifying graduate and undergraduate educational loans incurred by primary care health professionals. For the first 2 years of full-time clinical practice at an approved site in a federally designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. (There is a minimum 2-year service obligation.) For subsequent years of full-time clinical practice, if the NHSC LRP contract is extended, the Secretary will repay up to $35,000 per year. Participants must use the loan repayment funds for payment of their qualifying educational loans. The Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved. The 39% payment is authorized to reimburse participants for all or a part of the tax liability incurred as a result of their LRP funding. In addition to these amounts, NHSC LRP participants will receive a salary from the private or public entity which employs them while they are serving.

In an effort to assist loan repayment participants to reduce their educational debt with as little interest expense as is possible, the LRP will disburse payments to participants on an advanced basis. Three methods of

advanced payments are currently available to LRP participants:

• Advanced Quarterly Payment Method—The participant will receive two payments in the first quarter of the service obligation. The first payment will be disbursed approximately 30 days after the beginning of service and the second payment will be disbursed at the end of the first quarter, thereby placing the payment schedule one quarter in advance for the remainder of the service commitment.

• Advanced Annual Lump Sum Payment Method—The participant will be paid one advanced annual lump sum payment up to $25,000 (plus 39% of that payment for tax assistance), approximately 90 days after the beginning of the first year of service, and another advanced annual lump sum payment up to $25,000 (plus 39% of that payment for tax assistance), approximately 90 days after the beginning of the second year of service.

• Advanced Biennial Lump Sum Payment Method—The participant will receive one advanced biennial lump sum payment up to $50,000 (plus 39% of that payment for tax assistance) approximately 90 days after the beginning of the first year of service.

The Secretary will identify and make available annually a list of those HPSA sites which will be available for service repayment under the NHSC LRP. The Secretary will select applicants for consideration for participation in the NHSC LRP according to the following criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined at the end of this notice.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their profession and specialty (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board, and in the case of other health professions, are certified in their specialty), and have a current and unrestricted license to practice their profession in the State in which they intend to serve, will receive highest consideration.

(5) The individual's academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

In providing contracts under the NHSC LRP, priority will be given to an applicant:

• Whose health profession or specialty is most needed by the NHSC;

• Who has and whose spouse, if any, has characteristics that increase the probability of continuing to serve in a HPSA upon completion of his or her service obligation;

• Who is from a disadvantaged background, subject to the preceding paragraph.

Eligible Participants

To be eligible to participate in the NHSC LRP, an individual must:

(1) (a) Have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified, in accordance with State licensure requirements, as a nurse midwife, nurse practitioner, or physician assistant. Other health professions include clinical psychology, clinical social work, and dental hygiene;

(b) Be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or

(c) Be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession.

(2) Be eligible for, or hold an, appointment as a commissioned officer in the Regular or Reserve Corps of the PHS or be eligible for selection for civilian service in the NHSC (e.g., must be a citizen or national of the United States); and

(3) Submit an application for a contract to participate in the NHSC LRP which contract describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP unless such obligation is completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP.

Any individual who has a judgment lien against his or her property for a debt to the United States is ineligible to participate in the NHSC LRP until the judgment is paid in full or otherwise satisfied.

No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC LRP contract. All individuals must have a current and unrestricted license to practice their profession in the State of practice prior to beginning service under this Program.

Professions and Specialties Needed by the NHSC

At this time, the Secretary has determined, based on community demand, that priority will be given to: Physicians (M.D.s and D.O.s) who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, obstetrics/gynecology, internal medicine, and pediatrics.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals. In addition, this program is not subject to the Public Health System Reporting Requirements, since the requirements do not cover payment to individuals.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.162.

Dated: March 24, 1997.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 97–7838 Filed 3–27–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Submission for OMB Review; Comment Request; Special Volunteer and Guest Researcher Assignment

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 10, 1997, (62 FR 1463) and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an

additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: *Title:* Special Volunteer and Guest Researcher Assignment. *Type of Information Collection Request:* Revision of OMB No. 0925–0177; 4/30/97. *Need and Use of Information Collection.* Form NIH–590 records, names, address, employer, education, and other information on prospective Special Volunteers and Guest Researchers, and is used by the responsible NIH approving official to determine the individual's qualifications and eligibility for such assignments. The form is the only official record of approved assignments. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Guest Researcher and Special Volunteer candidates. *Estimated Number of Respondents:* 1,560. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response:* .08. *Estimated Total Annual Burden Hours Requested:* 125. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Guest researcher	370	1	.08	29.6
Special Volunteer	1190	1	.08	95.2
Total	1560	1	.08	125

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and the clarity of information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, mechanical, or other technological collection techniques or other forms of information technology.

DIRECT COMMENTS TO: Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Yetta L. Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH, Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Yetta L. Patterson, Personnel Management Specialist, Office of Human Resource Management, OD, NIH, Building 31, Room 1C39, 31 Center Drive MSC 2272, Bethesda, MD 20892–2272.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before April 28, 1997.

Dated: March 21, 1997.

Stephen C. Benowitz,

Director, Office of Human Resource Management.

[FR Doc. 97–7828 Filed 3–27–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Women and Infants Transmission Study.

Date: March 25, 1997.

Time: 8:00 a.m.

Place: Solar Building, Room 1A–1, 6003 Executive Boulevard, Rockville, MD 20892, (301) 496–2550.

Contact Person: Dr. Sayeed Quraishi, Scientific Review Adm., 6003 Executive Boulevard, Solar Building, Room 4C22, Bethesda, MD 20892, (301) 496–7465.

Purpose/Agenda: To evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: March 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7829 Filed 3–27–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 27, 1997.

Time: 4 p.m.

Place: 6120 Executive Blvd., Bethesda, MD 20892 (telephone conference call).

Contact Person: Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate a Small Grant application.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Date: March 28, 1997.

Time: 11 a.m.

Place: 6120 Executive Blvd., Bethesda, MD 20892 (telephone conference call).

Contact Person: Richard Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda MD 20892–7180, 301–496–8683.

Purpose/Agenda: To review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: March 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–7830 Filed 3–27–97; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration

Estimation Methodology for Adults with Serious Mental Illness (SMI)

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Solicitation of comments.

SUMMARY: This notice describes the proposed methodology for identifying and estimating the number of adults with serious mental illness (SMI) within each State. This notice is being served as part of the requirement of Public Law 102–321, the ADAMHA Reorganization Act of 1992.

COMMENT PERIOD: The Administrator is requesting written comments which must be received on or before May 27, 1997.

ADDRESSES: Comments should be sent to Ronald W. Manderscheid, Ph.D., Chief, Survey and Analysis Branch, Center for Mental Health Services, Parklawn Building Room 15C–04, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–7926 fax.

FOR FURTHER INFORMATION CONTACT: A detailed paper outlining the estimation methodology described here is available from Ronald W. Manderscheid, Ph.D., Chief, Survey and Analysis Branch, Center for Mental Health Services, Parklawn Building Room 15C–04, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–3343 voice, (301) 443–7926 fax.

Background

Public Law 102–321, the ADAMHA Reorganization Act of 1992, amended the Public Health Service Act and created the Substance Abuse and Mental Health Services Administration (SAMHSA). The Center for Mental Health Services (CMHS) was established within SAMHSA to coordinate Federal efforts in the prevention, treatment, and promotion of mental health. Title II of Public Law 102–321 establishes a Block Grant for Community Mental Health Services administered by CMHS, which permits the allocation of funds to States for the provision of community mental health services to children with a serious emotional disturbance and adults with a serious mental illness. Public Law 102–321 stipulates that States estimate the incidence (number of new cases) and prevalence (total number of cases in a year) in their applications for Block Grant funds. As part of the process of implementing this new block grant, definitions of the terms ''children with a serious emotional disturbance'' and ''adults with a serious mental illness'' were announced on May 20, 1993, in **Federal Register** Volume 58, No. 96, p. 29422. Subsequently, a group of technical experts was convened by CMHS to develop an estimation methodology to ''operationalize the key concepts'' in the definition of adults with serious mental illness. A similar group is preparing an estimation methodology for children and adolescents with a serious emotional disturbance.

Data Sources

Data from two major national studies, the National Comorbidity Survey (NCS) and the Epidemiologic Catchment Area (ECA) Study, were used to estimate the prevalence of adults with serious mental illness. The NCS, a nationally representative sample household survey conducted in 1990–91 assessed the prevalence of DSM–III–R disorders in persons aged 15–54 years old. This sample included over 1,000 census tracts in 174 counties in 34 States. The ECA, a general population survey of five local areas in the U.S., was conducted in 1980–85 to determine the prevalence of DSM III disorders in persons age 18 and older. The ECA data utilized for the present analysis was limited to the Baltimore site because that was the only site that had disability data needed to operationalize the criteria for SMI. Although the Baltimore sample is not nationally representative, it is used in this analysis because the ECA provides a rough replication and check on the NCS data. Also, the NCS does not have data on persons age 55 and older, so the ECA data are used to estimate the prevalence of serious mental illness among persons 55 years and older. The group of technical experts determined that it is not possible to develop estimates of incidence using currently available data. However, it is important to note that incidence is always a subset of prevalence. In future, incidence and prevalence data will be collected.

Serious Mental Illness (SMI)

As previously defined by CMHS, adults with a serious mental illness are persons 18 years and older who, at any time during a given year, had a diagnosable mental, behavioral, or emotional disorder that met the criteria of DSM–III–R *AND* ''* * * that has resulted in functional impairment which substantially interferes with or limits one or more major life activities * * *.'' The definition states that ''* * * adults who would have met functional impairment criteria during the referenced year without the benefit of treatment or other support services are considered to have serious mental illnesses * * *.'' DSM–III–R ''V'' codes, substance use disorders, and developmental disorders are excluded from this definition.

The following criteria were used to operationalize the definition of serious mental illness in the NCS and ECA data:

(1) Persons who met criteria for disorders defined as severe and persistent mental illnesses (SPMI) by the National Institute of Mental Health (NIMH) National Advisory Mental Health Council (National Advisory Mental Health Council, 1993).

To this group were added:

(2) Persons who had another 12-month DSM–III–R mental disorder (with the exclusions noted above), *AND*

- Either planned or attempted suicide at some time during the past 12 months, *OR*
- Lacked any legitimate productive role, *OR*
- Had a serious role impairment in their main productive roles, for example, consistently missing at least one full day of work per month as a direct result of their mental health, *OR*
- Had serious interpersonal impairment as a result of being totally socially isolated, lacking intimacy in social relationships, showing inability to confide in others, and lacking social support.

Estimation Procedures

Two logistic regression models were developed to calculate prevalence estimates for adults with SMI.

(a) A Census Tract Model for years in which the decennial U.S. census is conducted.

(b) A County-Level Model to be used biannually in intercensal years.

In non-censal years, the county-level model will be used to estimate SMI prevalence, after adjusting for its known relationship with the census tract model.

Formula

Census-Tract Model

Using 1990 census data, a logistic regression model was developed to calculate predicted rates for each cell of an age by sex by race table for each of the 61,253 Census Tracts in the country. Next, the rates were multiplied by cell frequencies and subtotaled to derive tract-level estimates. Finally, the tract-level estimates were aggregated to arrive at county-level and state-level prevalence estimates of adults with SMI. This regression methodology is often used in small area estimation (Ericksen, 1974; Purcell & Kish, 1979). The actual census tract model equation is specified immediately below:

PARAMETER ESTIMATES FOR CENSUS-TRACT MODEL

Predictor	Odds ratio	95% confidence interval
Intercept	*0.02	(0.01–0.04)
Individual-Level Variables		
Age:		
18–24	*1.94	(1.18–3.17)
25–34	1.32	(0.86–2.03)
35–44	1.46	(0.96–2.21)
45–54	1.00	(—)
Sex:		
Female	*2.23	(1.57–3.19)
Male	1.00	(—)
Race:		
Nonhispanic white	1.00	(—)
Black/Hispanic/other	*0.49	(0.28–0.87)
Marital Status:		
Married/Cohabiting	1.00	(—)
Never Married	*3.90	(1.15–3.08)
Separated/Divorced/Widowed	*1.88	(2.41–6.31)
Census-Tract Level Variables		
F2 (High socio-economic status)	1.16	(0.90–1.49)
F4 (Immigrants)	0.99	(0.85–1.14)
County-Level Variables		
County Urbanicity:		
Metropolitan	1.12	(0.85–1.49)
Other	1.00	(—)
Interactions Among Variables		
FemaleXSeparated/Divorced/Widowed	*0.47	(0.24–0.91)
FemaleXNever Married	*0.47	(0.28–0.78)
Non WhiteXSeparated/Divorced/Widowed	*2.62	(1.29–5.33)
Non WhiteXNever Married	1.81	(0.95–3.44)
FemaleXF2	*0.70	(0.51–0.96)
UrbanicityXF2	*0.75	(0.52–0.95)
F2XF4	0.78	(0.64–0.94)

*Significant at the .05 level, two tailed test; F2=Census Tract factor score for high socioeconomic status (SES); F4=Census Tract factor score for immigrants.

The estimate for persons 55 years and older is derived from analysis of ECA data in conjunction with NCS data. The prevalence ratio among ECA respondents ages 55–64 and 65 years and above, were found to be 84 and 31 percent as large, respectively, as the prevalence estimate for NCS respondents 18–54 years old, after controlling for differences in gender and race. NCS State-level estimates were extrapolated using these ratios. These ratios did not differ significantly by sex or race. A factor of .81 was applied to State-level SMI estimates for the age range 18–54 to derive the rate for the age range 55–64, and .31 was used to arrive at the estimate for person 65 and older. A weighted sum (by age distribution of each State) was calculated to determine the final State-level SMI prevalence estimate.

County Model

U.S. Census Bureau tract-level data are available only for years in which the decennial U.S. Census is conducted. To obtain prevalence estimates for adults with a SMI during intercensal years, the group of technical experts used biennial individual- and county-level data from the Census Bureau's small area estimation program. Predicted values

from the logistic regression equation were used to calculate county-level estimates. In contrast to the census tract model, the initial estimates using this approach were generated at the county level. These county-level estimates are then summed to provide State-level prevalence estimates. The actual county-level model equation is specified immediately below:

PARAMETER ESTIMATES FOR COUNTY-LEVEL MODEL

Predictor	Odds ratio	95% confidence interval
Intercept	*0.04	(0.02–0.07)
INDIVIDUAL-LEVEL VARIABLES		
Age:		
18–24	1.69	(1.00–2.85)
25–34	1.10	(0.65–1.88)
35–44	1.24	(0.71–2.15)
45–54	1.00	(–)
Sex:		
Female	1.58	(1.17–2.13)
Male	1.00	(–)
COUNTY-LEVEL VARIABLES		
Urbanicity:		
Metropolitan	1.35	(0.99–1.85)
Other	1.00	(–)

* Significant at the 0.05 level, two-tailed test.

Adjustment for persons age 55 years and older is carried out as in the census-tract model. An adjustment factor (Census Bureau, Fay, 1987; Fay & Herriot, 1979) based on the ratio of county-level model estimates for 1990 and census-tract model estimates for 1990 can be used to adjust biannual estimates for subsequent years from the county-level model. This procedure assumes that the census-tract model is more accurate than the county-level model.

County and State Estimates

As stated earlier, census tract model prevalence estimates were summed to derive county estimates, and county estimates were summed to arrive at State estimates. The 12-month prevalence is estimated nationally to be 5.4 percent or 10.0 million people in the adult household population, of which 2.6 percent or 4.8 million adults have a serious and persistent mental illness (figure 1).

The above estimates are based on noninstitutionalized persons residing in the community. Limited information currently exists on SMI estimates for persons institutionalized (i.e., persons in correctional institutions, nursing homes, the homeless, persons in military barracks, hospitals/schools/homes for persons who are mentally ill or mentally retarded). Fischer and Breakey (1991), indicate that on average, the SMI prevalence rate for these groups (including about 5 million people or 2.7 percent of the U.S. adult population) is about 50 percent. The following assumptions were made in deriving rough estimates of SMI prevalence for persons who are institutionalized:

(a) For 1.1 million residents of correctional institutions, 100 percent of whom are adults, prevalence of SMI is estimated to be 57 percent.

(b) For 1.8 million residents of nursing homes, 100 percent of whom are adults, prevalence of SMI is estimated to be 46 percent.

(c) For 0.5 million persons who are homeless, 80 percent of whom are adults, prevalence of SMI is estimated to be 50 percent.

(d) For 0.6 million persons in military barracks, all of whom are adults, the SMI prevalence rate is equivalent to that of the adult household population.

(e) For 0.4 million persons in hospitals, homes, and schools for persons who are mentally ill, 80 percent of whom are adults, prevalence of SMI is estimated to be 100 percent.

(f) For 0.6 million persons in other institutional settings such as chronic disease hospitals, homes and schools for persons with physical disability, and rooming houses, 50 percent of whom are adults, prevalence of SMI is estimated to be 50 percent.

State estimates of each of these populations can be added to the State SMI populations identified below.

Only a portion of adults with SMI seek treatment in any given year. Due to the episodic nature of SMI, some persons may not require mental health service at any particular time.

Provision of Estimates to States

CMHS will provide each State mental health agency with estimates in order to initiate the first cycle of use. Subsequently, CMHS will provide technical assistance to States to implement the methodology using State demographic information.

TABLE 1.—ESTIMATED 12-MONTH PREVALENCE OF SERIOUS MENTAL ILLNESS (SMI) AMONG PERSONS AGES 18 AND OLDER, BY STATE, 1990*+

State	Number of people with SMI	Total adult population 18 yrs+	Prevalence of SMI
Alabama	172,944	2,981,799	5.8
Alaska	23,795	377,699	6.3
Arizona	179,835	2,684,109	6.7

TABLE 1.—ESTIMATED 12-MONTH PREVALENCE OF SERIOUS MENTAL ILLNESS (SMI) AMONG PERSONS AGES 18 AND OLDER, BY STATE, 1990*+—Continued

State	Number of people with SMI	Total adult population 18 yrs+	Prevalence of SMI
Arkansas	95,128	1,729,594	5.5
California	1,386,586	22,009,296	6.3
Colorado	160,586	2,433,128	6.6
Connecticut	129,414	2,537,535	5.1
Delaware	28,661	502,827	5.7
District of Columbia	28,409	489,808	5.8
Florida	624,445	10,071,689	6.2
Georgia	299,308	4,750,913	6.3
Hawaii	31,468	828,103	3.8
Idaho	38,409	698,344	5.5
Illinois	500,570	8,484,236	5.9
Indiana	237,115	4,088,195	5.8
Iowa	109,067	2,057,875	5.3
Kansas	103,510	1,815,960	5.7
Kentucky	161,141	2,731,202	5.9
Louisiana	176,570	2,992,704	5.9
Maine	48,703	918,926	5.3
Maryland	220,773	3,619,227	6.1
Massachusetts	265,811	4,663,350	5.7
Michigan	410,192	6,836,532	6.0
Minnesota	179,666	3,208,316	5.6
Mississippi	100,455	1,826,455	5.5
Missouri	216,728	3,802,247	5.7
Montana	30,002	576,961	5.2
Nebraska	62,066	1,149,373	5.4
Nevada	65,152	904,885	7.2
New Hampshire	49,830	830,497	6.0
New Jersey	314,328	5,930,726	5.3
New Mexico	69,441	1,068,328	6.5
New York	768,930	13,730,906	5.6
North Carolina	296,326	5,022,488	5.9
North Dakota	23,634	463,415	5.1
Ohio	474,795	8,047,371	5.9
Oklahoma	133,898	2,308,578	5.8
Oregon	124,973	2,118,191	5.9
Pennsylvania	508,863	9,086,833	5.6
Rhode Island	48,222	777,774	6.2
South Carolina	156,556	2,566,496	6.1
South Dakota	24,877	497,542	5.0
Tennessee	230,617	3,660,581	6.3
Texas	850,547	12,150,671	7.0
Utah	71,201	1,095,406	6.5
Vermont	24,341	419,675	5.8
Virginia	280,957	4,682,620	6.0
Washington	216,318	3,605,305	6.0
West Virginia	70,195	1,349,900	5.2
Wisconsin	205,359	3,602,787	5.7
Wyoming	17,812	318,063	5.6
*Total	9,995,579	185,103,320	5.4

Does not include persons who are homeless or are institutionalized.

+ The total for the U.S. is based upon direct, weighted counts from the survey results. The total for each State is based upon synthetic modeling at the county level and then summing across counties to derive a State total. These two approaches are subject to different types of sampling and nonsampling errors. Therefore, the sum of the state totals will not necessarily equal the U.S. total.

Limitations

The ECA and NCS were designed to study lifetime prevalence of mental disorders rather than 12-month prevalence. As a result, the emphasis in diagnostic assessment was on lifetime disorders. In addition, functional impairment was not a primary focus in either the ECA or the NCS.

Current data cannot provide estimates of incidence. Additional information needs to be collected in the future.

Scope of Application

Inclusion in or exclusion from the definition is not intended to confer or deny eligibility for any service or benefit at the Federal, State, or local levels. Additionally, the definition is not intended to restrict the flexibility or responsibility of the State or local government to tailor publicly funded service systems to meet local needs and priorities. However, all individuals whose services are funded through Federal Community Mental Health Services Block Grant funds must fall within the criteria set forth in these definitions. Any ancillary use of these definitions for purposes other than those identified in the legislation is outside the purview and control of CMHS.

It is anticipated that additional work will be done in future years to refine and update the estimation methodology. CMHS will keep States apprised as this work develops.

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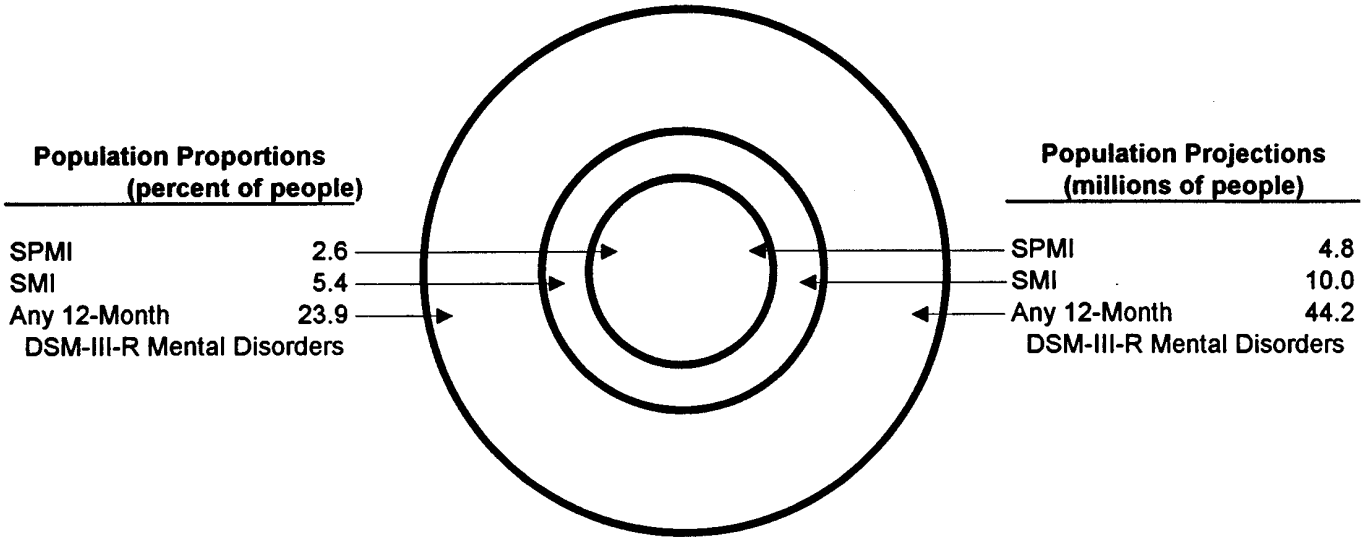
Dated: March 5, 1997.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

BILLING CODE 4162–20–P

Figure 1. Estimated Household Population (Ages 18+) 12-Month Prevalences and Population Projections of DSM-III-R Severe and Persistent Mental Illness (SPMI), Serious Mental Illness (SMI), and Any Mental Illness Based on Pooled Baltimore ECA/NCS Data



These estimates are based on extrapolation from household surveys and consequently exclude homeless people and residents of institutions such as nursing homes, prisons, and long-term care facilities. An estimated 2.2 million additional persons in these excluded sections are thought to have SMI, for 12.2 million in the total population.

[FR Doc. 97–7734 Filed 3–27–97; 8:45 am]

BILLING CODE 4162–20–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–31]

Federal Property Suitable as Facilities to Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington,

DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104. Building 5683, Washington , DC 20332–8020; (202) 767–4184; ARMY: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–1191; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; TRANSPORTATION: Mr. Rugene Spruill, Department of Transportation, Acting Director, Space Management, SVC–140, Transportation Administrative Service Center, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: March 20, 1997.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 3/28/97

Suitable/Available Properties

Buildings (by State)

California

Bakersfield Federal Building
800 Truxton Avenue
Bakersfield Co.: Kern CA 93302–
Landholding Agency: GSA
Property Number: 549710013
Status: Excess
Comment: 33,755 sq. ft., 3 floors plus basement, most recent use—court/office, presence of non-friable asbestos/lead base paint
GSA Number: 9–G–CA–1478

Michigan

40-Mile Point Light Station
Rogers City Co: Presque Isle MI
Landholding Agency: GSA
Property Number: 549710016
Status: Excess
Comment: 4350 sq. ft., most recent use—residential/museum, limited access, historical significance, protection of endangered species, possible asbestos/lead based paint
GSA Number: 1–U–MI–638–A

New York

Bldg. 118
10 Pennsylvania Ave.
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 419710001
Status: Excess
Comment: 2000 sq. ft., 2-story, needs repair, presence of asbestos, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Idaho

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Louisiana

3 Office Buildings
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640002
Status: Underutilized
Comment: 4326 sq. ft., 7877 sq. ft., and 7892 sq. ft., good condition

Warehouse
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy

Property Number: 419640003
Status: Underutilized
Comment: 9830 sq. ft., good condition

Laboratory
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640004
Status: Underutilized
Comment: 1128 sq. ft., good condition

Guard House
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640005
Status: Underutilized
Comment: 420 sq. ft., good condition

2 Dock Operator Bldgs.
St. James Terminal
St. James Co: St. James Paris LA 70086–
Landholding Agency: Energy
Property Number: 419640006
Status: Underutilized
Comment: 392 sq. ft. each

Unsuitable Properties

BUILDINGS (by State)

Alaska

Bldg. 4130, Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219710195
Status: Unutilized
Reason: Secured Area

Bldg. 4133, Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219710196
Status: Unutilized
Reason: Secured Area

Bldg. 4134, Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219710197
Status: Unutilized
Reason: Secured Area

Bldg. 4139, Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219710198
Status: Unutilized
Reason: Secured Area

Bldg. 39002, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710199
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39199, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710200
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39223, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710201
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39225, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710202
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39228, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710203
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39229, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710204
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39230, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710205
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39231, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710206
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39232, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710207
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39233, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710208
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39240, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710209
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39249, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710210
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39415, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710211
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39419, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710212
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39600(A), Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710213
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39600(B), Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710214
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39601, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710215
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39602, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710216
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39603, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710217
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39604, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710218
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39605, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710219
Status: Unutilized
Reason: Extensive deterioration

Bldg. 39611, Fort Richardson
Ft. Richardson AK 99505–6500
Landholding Agency: Army
Property Number: 219710220
Status: Unutilized
Reason: Extensive deterioration

Bldg. 456
Coast Guard—ISC Kodiak
Kodiak Co: Kodiak Borough AK 99615–
Landholding Agency: DOT
Property Number: 879710002
Status: Excess
Reason: Within airport runway clear zone; secured area; extensive deterioration

California

Bldg. 918
Sandia National Laboratories
Livermore CA 94550–
Landholding Agency: Energy
Property Number: 419640001
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material; extensive deterioration

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540001
Status: Underutilized
Reason: Other; secured area
Comment: Contamination

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540002
Status: Underutilized

Reason: Other; secured area
Comment: Contamination

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419540003
Status: Underutilized
Reason: Other; secured area
Comment: Contamination

Bldg. 2
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419610039
Status: Unutilized
Reason: Other; secured area
Comment: Contamination

Bldg. 7
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419610040
Status: Unutilized
Reason: Other; Secured Area
Comment: Contamination

Bldg. 31–A
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419610041
Status: Unutilized
Reason: Other; Secured Area
Comment: Contamination

Bldg. 33
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 419610042
Status: Unutilized
Reason: Other; Secured Area
Comment: Contamination

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419440003
Status: Excess
Reason: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 419540004
Status: Excess
Reason: Secured Area

Idaho

Bldg. PBF–621
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610001
Status: Unutilized
Reason: Secured Area

Bldg. CPP–1609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610002
Status: Unutilized
Reason: Secured Area

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610003
Status: Unutilized
Reason: Secured Area

Bldg. CPP–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610004
Status: Unutilized
Reason: Secured Area

Bldg. CPP–650
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610005
Status: Unutilized
Reason: Secured Area

Bldg. CPP–608
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610006
Status: Unutilized
Reason: Secured Area

Bldg. TAN–660
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610007
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610009
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610010
Status: Unutilized
Reason: Secured Area

Bldg. TAN–661
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610011
Status: Unutilized
Reason: Secured Area

Bldg. TAN–657
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610012
Status: Unutilized
Reason: Secured Area

Bldg. TAN–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–635
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610015
Status: Unutilized
Reason: Secured Area

Bldg. TAN–638
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610016
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–616
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610020
Status: Unutilized
Reason: Secured Area

Bldg. PBF–617
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610021
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–624
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610023
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory

Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610026
Status: Unutilized
Reason: Secured Area

Bldg. CF–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610027
Status: Unutilized
Reason: Secured Area

Bldg. CF–672
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610028
Status: Unutilized
Reason: Secured Area

Bldg. CF–664
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610029
Status: Unutilized
Reason: Secured Area

Bldg. CF–643
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610030
Status: Unutilized
Reason: Secured Area

Bldg. CF–649
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610031
Status: Unutilized
Reason: Secured Area

Bldg. CF–652
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610032
Status: Unutilized
Reason: Secured Area

Bldg. CF–656
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610033
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–665
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610035
Status: Unutilized
Reason: Secured Area

Bldg. CF–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610036
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419610037
Status: Unutilized
Reason: Secured Area

Illinois

Bldg. 305
Argonne National Laboratory
Argonne Co: DuPage IL 60439–
Landholding Agency: Energy
Property Number: 419640007
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 419610038
Status: Unutilized
Reason: Secured Area

Michigan

Facilities 246, 248, 252–254
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710039
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

7 Facilities
Selfridge Air National Guard
No's. 240, 242, 244, 245, 247, 250, 251
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710040
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Facilities 237, 238
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710041
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

5 Facilities
Selfridge Air National Guard
No's. 228, 230, 232, 234, 236
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710042
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Facility 114
Selfridge Air National Guard
Mt. Clemens Co: Macomb MI 48045–5295
Landholding Agency: Air Force
Property Number: 189710043
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419430002
Status: Unutilized
Reason: Extensive deterioration

McGee Warehouse
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610043
Status: Unutilized
Reason: Extensive deterioration

Bldg. 73, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610044
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 75, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610045
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 76, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610046
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 77, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610047
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 78, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610048
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 79, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610049
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 80, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610050
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 99, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419610051
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 89, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 90, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 91, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 92, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 93, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 101, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419620010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 419630004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

New York

Bldg. 2623
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219710221
Status: Unutilized
Reason: Extensive deterioration

North Carolina

30 Bldgs., Fort Bragg
Ft. Bragg Co: Cumberland NC 28307—
Location: 31804, 41467, 41566, 69073, 69673, 94546, A2667, A2669, A2671, A2886, A4795, A4895, B4350, B4450, C5739, C7312, N4943, N5042, N5141, O8411–O8414, P6382–P6384, P6482–6484, P6761
Landholding Agency: Army
Property Number: 219710222
Status: Unutilized
Reason: Extensive deterioration

Bldg. O–9052, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307—
Landholding Agency: Army
Property Number: 219710223
Status: Unutilized
Reason: Extensive deterioration

Bldg. M–2362, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307—
Landholding Agency: Army
Property Number: 219710224
Status: Unutilized
Reason: Extensive deterioration

Bldg. BA102, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779710064
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. BA103, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779710065
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. BA104, Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779710066
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Ohio

Fernald Env. Mgmt. Project
7400 Willey Road
Fernald Co: Hamilton OH 45030–
Landholding Agency: Energy
Property Number: 419540005
Status: Unutilized
Reason: Other
Comment: Contamination

Mound—Guard Post
Mound Road
Miamisburg Co: Montgomery OH 45343–
Landholding Agency: Energy
Property Number: 419540006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Toledo Harbor Lighthouse
Lake Erie
Toledo Co: Lucas OH 43611–
Landholding Agency: GSA
Property Number: 549710014
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 1–U–OH–801

Puerto Rico

Dry Dock & Ship Repair Fac.
U.S. Navy
San Juan PR
Landholding Agency: GSA
Property Number: 549710012
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway
GSA Number: 1–N–PR–491

South Dakota

Bldg.—Huron Airport Hangar
Huron Regional Airport
Huron Co: Beadle SD 57350–
Landholding Agency: Energy
Property Number: 419510005
Status: Unutilized
Reason: Within airport runway clear zone

Tennessee

Bldg. 203
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219710225
Status: Unutilized
Reason: Extensive deterioration

Bldg. 230
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219710226
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 419710002
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Utah

Bldgs. 500–524
Dugway Proving Ground
Dugway Co: Tooele UT 84022–
Landholding Agency: Army
Property Number: 219710227
Status: Unutilized
Reason: Secured Area

Bldgs. 5346–5350, 5355–5357
Dugway Proving Ground
Dugway Co: Tooele UT 84022–
Landholding Agency: Army
Property Number: 219710228
Status: Unutilized
Reason: Secured Area

Virginia

Operations Bldg.

U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 879710003
Status: Unutilized
Reason: Secured Area

West Virginia

Flight Service Station
Morgantown Airport
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: GSA
Property Number: 549710011
Status: Surplus
Reason: Within airport runway clear zone
GSA Number: 4–U–WV–527

Land (by State)

Georgia

Former Honor Farm No. 1
McDonough Blvd. & Thomasville Blvd.
Atlanta Co: Fulton GA 30315–
Landholding Agency: GSA
Property Number: 549710010
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–GR(1)–GA–530A&B

Kentucky

2.15 Acres
Owensboro Moorings
Owensboro Co: Daviess KY 42301–
Landholding Agency: GSA
Property Number: 549710015
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Floodway
GSA Number: 4–U–KY–605

[FR Doc. 97–7571 Filed 3–27–97; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. FR–4156–C–03]

Notice of Annual Factors for Determining Public Housing Agency Administrative Fees for the Section 8 Rental Voucher, Rental Certificate and Moderate Rehabilitation Programs; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; Correction.

SUMMARY: On March 3, 1997 (62 FR 9488) and republished on March 12, 1997 (62 FR 11526) because of a error in the formatting of the administrative fees, the Department published a Notice that announced the monthly per unit fee amounts for use in determining the on-going administrative fee for public housing agencies and Indian housing authorities (HAs) administering the rental voucher, rental certificate and moderate rehabilitation programs (including Single Room Occupancy and Shelter Plus Care) during Federal Fiscal Year 1997.

The purpose of this document is to correct an erroneous OMB control number that was printed in each document.

EFFECTIVE DATE: The effective dates listed on March 3, 1997 (62 FR 9488) and on March 12, 1997 (62 FR 11526) remain unchanged and still apply.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Office of Public and Indian Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing- or speech-impaired individuals may call TTY number (202) 708–4594. (These numbers are not toll-free.)

Correction

Accordingly, in FR Doc. 97–5014, a Notice published on March 3, 1997 at 62 FR 9488, and in FR Doc. 97–5925, a Notice published on March 12, 1997 at 62 FR 11526, the following corrections are made:

1. On page 9488, in the preamble, in the first column under the heading **SUPPLEMENTARY INFORMATION**, under the subheading ''Paperwork Reduction Act Statement'', the OMB control number ''2502–0348'' is corrected to read ''2577–0149''.

2. On page 11526, in the preamble, in the first column under the heading **SUPPLEMENTARY INFORMATION**, under the subheading ''Paperwork Reduction Act Statement'', the OMB control number ''2502–0348'' is corrected to read ''2577–0149''.

Dated: March 24, 1997.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 97–7863 Filed 3–27–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Environmental Impact Report/Statement for Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth Within the Multiple Species Conservation Program Planning Area in San Diego County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public of the availability of the final Environmental Impact Report/Statement on the proposed issuance of incidental take permits for up to 85 species within the Multiple Species Conservation Program planning area in San Diego County, California. In conjunction with this regional program, the City of San Diego has applied to the U.S. Fish and Wildlife Service for an incidental take permit; other jurisdictions may apply as well. Publication of the Record of Decision and issuance of a permit to the City of San Diego will occur no sooner than 30 days from the date of this notice. This notice is provided pursuant to regulations implementing the National Environmental Policy Act.

ADDRESSES: The documents discussed herein are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008; at the City of San Diego Metropolitan Wastewater Department, 600 B Street, Fifth Floor, San Diego, California 92101; and at public libraries throughout greater San Diego.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett or Ms. Nancy Gilbert, Fish and Wildlife Biologists, U.S. Fish and Wildlife Service at the above Carlsbad address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the final Environmental Impact Report/Statement and the responses to comments can be obtained by contacting the Carlsbad Field Office (see **ADDRESSES**). The responses to comments address revisions that were made to the recirculated draft Environmental Impact Report/Statement, draft Multiple Species Conservation Program Plan, draft City of San Diego Subarea Plan, and draft City of San Diego and model Implementation Agreements. The responses to comments also address revisions that will be made to the other draft subarea plans prior to their approval under the Multiple Species Conservation Program. The complete application file may be viewed during normal business hours, by appointment, at the Carlsbad Field Office (see **ADDRESSES**). Copies of the final Environmental Impact Report/Statement and responses to comments are also available for review at the City of San Diego Metropolitan Wastewater Department (see **ADDRESSES**) and public libraries in the greater San Diego area. All individuals who requested a copy of, or commented on, the draft documents either have been sent copies of the final Environmental Impact Report/Statement and responses to comments, or an Executive Summary, or

have been sent a letter announcing availability of these documents.

Background

Under section 9 of the Endangered Species Act (Act) of 1973, as amended, and its implementing regulations, wildlife listed as threatened or endangered are protected from ''taking.'' The Act defines take, in part, as killing, harming, or harassing listed wildlife. U.S. Fish and Wildlife Service (Service) regulations further define harm to include significant habitat modification that results in death or injury of listed wildlife (50 CFR 17.3). Under section 10 of the Act, the Service may issue permits to take listed wildlife if such taking is incidental to, and not the purpose of, otherwise lawful activities, provided that an approved habitat conservation plan has been prepared. Among other criteria, issuance of such permits must not jeopardize the existence of listed species, both plant and animal. Regulations governing permits are in 50 CFR 17.22 and 17.32.

On December 10, 1993, the Service issued a final special rule for the coastal California gnatcatcher (*Polioptila californica californica*), pursuant to section 4(d) of the Act (58 FR 65088). Incidental take of the gnatcatcher is allowed under the special rule if such take results from activities conducted under a plan prepared pursuant to the Natural Community Conservation Planning Act of 1991, and the associated Process Guidelines and the Southern California Coastal Sage Scrub Conservation Guidelines. The special rule also requires Federal approval of the joint Natural Community Conservation Plan/Habitat Conservation Plan. The Multiple Species Conservation Program Plan is a joint Natural Community Conservation Plan/ Habitat Conservation Plan.

On August 18, 1996, the City of San Diego submitted an application for a 50-year incidental take permit to the Service. The application included the regional Multiple Species Conservation Program Plan, draft City of San Diego Subarea Plan, and a City of San Diego Implementing Agreement based upon a model Implementing Agreement for the entire program. Draft subarea plans were also included for the County of San Diego, Otay Water District, and cities of Chula Vista, Coronado, Del Mar, and Santee. These jurisdictions and the Otay Water District may apply for permits in the future in conjunction with the regional Multiple Species Conservation Program Plan. Should these jurisdictions apply for individual permits, the final Environmental Impact Report/Statement would be used to support their State and Federal environmental documentation requirements.

Under the proposed action, incidental take permits would be issued by the Service subject to the terms and conditions of the Multiple Species Conservation Program Plan, Subarea Plans, and individual Implementing Agreements. The proposed permits would authorize the incidental take of up to 85 species, now or in the future, including 13 listed animal species: the threatened coastal California gnatcatcher, western snowy plover (*Charadrius alexandrinus nivosus*), bald eagle (*Haliaeetus leucocephalus*), and red-legged frog (*Rana aurora draytoni*); and the endangered Riverside fairy shrimp (*Streptocephalus wootoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), California brown pelican (*Pelecanus occidentalis californicus*), American peregrine falcon (*Falco peregrinus anatum*), light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sterna antillarum*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and southwestern arroyo toad (*Bufo microscaphus californicus*). Unlisted species would be named on permits, with incidental take becoming effective concurrent with listing, should they be listed in the future. Plants also would be named on permits, to the extent that their take is prohibited under the Endangered Species Act.

Consistent with the Department of the Interior's ''No Surprises'' policy, the plan proponents also request assurances of no further land or financial compensation for the 85 species covered by the plan: 13 listed animals, 7 listed plants, 7 plant species proposed for listing, and 58 other plant and animal species within the planning area. The Multiple Species Conservation Program Plan is designed to conserve all 85 species according to standards required for species listed under the Endangered Species Act.

Although the Multiple Species Conservation Program Plan has focused on coastal sage scrub habitat, in keeping with the legislative intent of the California Natural Community Conservation Planning Act of 1991 to protect multiple habitat types, the plan proponents propose to conserve 23 additional vegetation types. Species not covered by the plan could be amended to the permit in the future, provided adequate conservation was provided and following a public review process. For vegetation communities that are sufficiently conserved by the plan, the Service and California Department of Fish and Game (together referred to as wildlife agencies) would provide (using all of their legal authorities and subject to the availability of appropriated funds) for the conservation and management of habitat for an uncovered species at a level which would allow the species to be amended to the permit should the species become listed. For vegetation communities that are significantly conserved by the plan, the wildlife agencies and permittees would contribute in partnership toward conservation and management needed to amend such species to the permit. Seventeen of the 24 vegetation types are sufficiently or significantly conserved by the plan.

The Multiple Species Conservation Program planning area (excluding military land) encompasses approximately 554,300 acres (900 square miles), of which about 297,600 acres (54 percent) remain as natural habitats that are subject to intense development pressure. Take would be authorized on approximately 173,700 acres of vacant land, of which 130,000 acres is habitat and 43,700 acres is disturbed or agricultural land.

The plan proponents propose to avoid and minimize take through local land-use regulation, environmental review, and resource protection guidelines that limit encroachment onto sensitive biological resources. Unavoidable take would be mitigated by establishing a preserve of approximately 171,900 acres within the boundaries of a Multiple Habitat Planning Area containing 24 vegetation communities. Lands would be acquired from willing sellers. Preserve lands that are publicly owned would be managed according to comprehensive long-term management plans that would address issues such as fire management, grazing management, control of predators and exotic species, recreation/public access management, and vegetative restoration and reintroduction.

The preserve would be assembled incrementally in conjunction with development. All private and public development projects that impact habitats of covered species would individually fund their own mitigation actions to protect other habitats in the preserve. Participating local governments would manage existing public lands in conformance with the plan. Local jurisdictions also would acquire and manage 13,000 acres of additional lands (a small percentage of the preserve) through a regional funding source that must be approved by the voters. To complement the preserve, and help assure that regional ecosystem management goals are met, the Federal

and State governments would conserve and manage 36,510 acres of existing lands and acquire and manage 13,500 additional acres as part of the preserve.

Under the proposed action, section 10(a)(1)(B) permits would be issued by the Service subject to the terms and conditions of the Multiple Species Conservation Program Plan, Subarea Plans, and Implementing Agreements. The proposed permits would authorize the incidental take of 85 species, as described above. Should take authorizations be approved in conjunction with the Multiple Species Conservation Program Plan, each jurisdiction would then exercise its land-use review and approval powers in accordance with its Implementing Agreement, Subarea Plan and the Multiple Species Conservation Program Plan. The five percent limit on interim loss of coastal sage scrub while plans are being developed, imposed as part of the Natural Community Conservation Planning Program and special section 4(d) rule for the Coastal California gnatcatcher, would be replaced by the conditions of each jurisdiction's permit and Implementing Agreement.

Development of the Final Environmental Impact Report/ Statement

To assure compliance with the purpose and intent of the National Environmental Policy Act and the California Environmental Quality Act, the final Environmental Impact Report/ Statement was developed cooperatively by the U.S. Fish and Wildlife Service Carlsbad Field Office (lead Federal agency) and the City of San Diego (lead local agency). On March 6, 1995, the Service published in the **Federal Register** a Notice of Intent to prepare a joint Environmental Impact Report/ Statement (60 FR 12246). This notice also advertised a joint public scoping meeting, held March 15, 1995. The scoping process was initiated in accordance with the National Environmental Policy Act to solicit comments from a variety of Federal, State, and local entities on issues/ alternatives to be addressed in the Environmental Impact Report/ Statement. On May 12, 1995, a Notice of Availability of the draft Environmental Impact Report/Statement was published in the **Federal Register** (60 FR 25734). The initial 45-day comment period was extended to 60 days (60 FR 32990). Public comments resulted in changes to the Multiple Species Conservation Program Plan, necessitating new analyses in the draft Environmental Impact Report/Statement. On August 30, 1996, a Notice of Availability of the recirculated draft Environmental Impact Report/Statement, and notice of receipt of an application from the City of San Diego for an incidental take permit associated with the Multiple Species Conservation Program was published in the **Federal Register** (61 FR 45983). In response to requests for extensions, this 45-day comment period also was extended to 60 days (61 FR 54675).

The Service received 119 letters of comment on the permit application and recirculated draft Environmental Impact Report/Statement. Issues included: (1) Species analysis approach, (2) adequacy of preserve design and linkages, (3) species and habitat assurances, (4) biological monitoring criteria and performance measures, (5) agricultural, grazing, and mining issues, (7) requests for specific changes to subarea plans, (8) alternatives, (9) revisions to the draft Implementing Agreement, (10) economic impacts, and (11) length, complexity, and organization of the documents, among other issues. Copies of all comments received and responses to those comments are available for public review (see **ADDRESSES**). The recirculated draft Environmental Impact Report/Statement, draft Multiple Species Conservation Program Plan, draft City of San Diego Subarea Plan, and draft City of San Diego and model Implementation Agreements have been revised, where appropriate, based on public comments. Subarea Plans for the other jurisdictions and the Otay Water District will be revised prior to approval under the Multiple Species Conservation Program Plan. No new issues or additional significant impacts were identified as a result of public comment on the draft recirculated Environmental Impact Report/ Statement.

Alternatives Analyzed in the Final Environmental Impact Report/ Statement

Due to the scale of the Multiple Species Conservation Planning Program, the lead agencies assessed various preserve configuration alternatives. Five alternatives were advanced for detailed analysis in the final Environmental Impact Report/Statement: (1) Proposed project alternative (approve and implement the Multiple Species Conservation Program Plan that would establish a preserve within the Multi-Habitat Planning Area), (2) no project/ no action alternative, (3) coastal sage scrub alternative, (4) biologically preferred alternative, and (5) public lands alternative. Each alternative was evaluated for its potential to result in significant adverse environmental impacts and the adequacy or inadequacy of the proposed measures to avoid, minimize, and substantially reduce and mitigate such negative effects.

The preferred action of the U.S. Fish and Wildlife Service is approval of the Multiple Species Conservation Program Plan and issuance of incidental take permits with the mitigating, minimizing, and monitoring measures outlined in the proposed project alternative. (See Background section for a description of this alternative.)

Under the no action or no project alternative, the regional Multiple Species Conservation Program Plan would not be implemented. Jurisdictions would either avoid take of listed species within the planning area or apply for individual permits under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended, on a project-by-project basis. Existing land use and environmental regulations would apply to all projects proposed within the planning area. Existing regulatory practices require mitigation for impacts to sensitive species and habitats resulting in lands being set aside for open-space preservation. Analyses indicate that the amount of land potentially conserved within the Multiple Species Conservation Program planning area under the no action alternative would be similar to that conserved under the proposed action (Multiple Habitat Planning Area). However, under the no action alternative, greater habitat fragmentation would likely occur because the lands set aside for open-space preservation would not be assembled in coordination with a regional preserve design.

The coastal sage scrub alternative would conserve 84,900 acres and 26 species. This alternative would include 21 vegetation types, providing adequate protection for 2 types, neither of which is rare.

The biologically preferred alternative would conserve 167,000 acres and 73 species. This alternative would include 24 vegetation types, adequately protecting 9. Of these 9 vegetation types, 7 are considered rare.

The public lands alternative would conserve 147,000 acres and 35 species. This alternative would include 24 vegetation types and adequately protect 6, all 6 of which are rare.

The underlying goal of the proposed project alternative is to implement ecosystem-based conservation measures aimed at the protection of multiple species and multiple vegetation types on a regional scale, while accommodating compatible development. The Multiple Species Conservation Program Plan would result

in the implementation of a comprehensive preserve strategy for coastal sage scrub and related vegetation types in the subregion, that is expected to provide long-term benefits to the coastal California gnatcatcher and 84 other covered species and their habitats. The Service intends to approve the Multiple Species Conservation Plan, the City of San Diego Subarea plan, and issue an incidental take permit to the City of San Diego. Should the other plan proponents submit permit applications, these applications would be announced in the **Federal Register** in the future.

This notice is provided pursuant to regulations implementing the National Environmental Policy Act (40 CFR 1506.6). Publication of the Record of Decision and issuance of a permit to the City of San Diego will occur no sooner than 30 days from the date of this notice.

Dated: March 24, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–7908 Filed 3–27–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[NV–930–1430–01; N–50568]

Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description published as FR Doc. 89–27518 in the **Federal Register**, 54 FR 48659–48664, November 24, 1989, of the public lands transferred to the Forest Service pursuant to Public Law 100–550, October 28, 1988.

On page 48660, column 2, line 22 from the bottom of the column, which reads ''Sec. 10, W½NW¼, SE¼;'' is hereby corrected to read ''Sec. 10, SE¼;''.

William K. Stowers,

Lands Team Lead.

[FR Doc. 97–7891 Filed 3–27–97; 8:45 am]

BILLING CODE 4310–HC–P

[ID–990–1020–01]

Resource Advisory Council; Meeting Location and Time

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a discussion from the ''Wayne Elmore'' team and a field tour to view riparian areas. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

DATE AND TIME: Date is April 23, 1997, starts at 8:00 a.m. at the Lincoln Inn in Gooding, Idaho. Public comments from 10:00 a.m.–10:30 a.m. on April 23, 1997.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Debra Kovar, Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: March 19, 1997.

Howard Hedrick,

Acting District Manager.

[FR Doc. 97–7894 Filed 3–27–97; 8:45 am]

BILLING CODE 4310–GG–P

[UT–040–1430–01; UTU–52877]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

SUMMARY: The following public lands, located near the city of St. George in Washington County, Utah, have been examined and found suitable for classification for lease or conveyance to the Washington County Water Conservancy District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Salt Lake Meridian, Utah

T. 41 S., R. 14 W.,
Sec. 23, S½NE¼SE¼, N½SE¼SE¼, N½SW¼SE¼SE¼, SE¼SW¼SE¼SE¼, SE¼SE¼SE¼;
Sec. 24, SW¼NW¼SW¼, W½SE¼NW¼SW¼, SE¼SE¼NW¼SW¼, SW¼SW¼, W½SE¼SW¼;
Sec. 25, Lots 3 through 6, NE¼SW¼NW¼, N½SE¼NW¼, E½SW¼SE¼NW¼, SE¼SE¼NW¼, E½W½NE¼SW¼, W½W½SE¼SW¼;
Sec. 26, Lots 17, 20 and 21;
Sec. 34, Lots 3 and 4, SW¼SE¼;
Sec. 35, Lots 5 through 9, 12 (TRACT 37), 13, and 16 through 18, W½E½NW¼, NE¼SW¼, SW¼NW¼SE¼, S½SE¼NW¼SE¼, SE¼SE¼NE¼, NE¼NE¼SE¼, S½NE¼SE¼;
T. 42 S., R. 14 W.,
Sec. 3, Lots 17 and 19;

containing 880.26 acres, more or less.

SUPPLEMENTARY INFORMATION: The Washington County Water Conservancy District proposes to incorporate and manage these public lands as part of the Quail Creek Recreation Area. These lands are not needed for Federal purposes. Leasing or conveying title to these public lands is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, and conditions:

Reservations to the United States:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. U.S. Geological Survey's stream gauging station authorizing under right-of-way reservation, serial number UTU–71170.

Subject to the following third party rights-of-way (R/W) grants:

1. Washington County Water Conservancy District's Quail Creek Reservoir dam, main access and spillway roads and power lines authorized under R/W grant, serial number UTU–51374.

2. Washington County Water Conservancy District's utility corridor authorized under R/W grant, serial number UTU–55675.

3. St. George City Corporation's water treatment facility and pipeline authorized under R/W grant, serial number UTU–60051.

4. Utah Department of Transportation's Quail Creek access road authorized under R/W grant, serial number UTU–68590.

5. Pacificorp's power transmission line authorized under R/W grant, serial number UTU–54580.

6. City of St. George's water pipeline authorized under R/W grant, serial number UTU–65448.

7. U.S. West Communication's telephone line authorized under R/W grant, serial number UTU–60037.

Detailed information concerning this action is available at the office of the Bureau of Land Management, Dixie Resource Area Office, 345 E. Riverside Drive, St. George, Utah 84790.

This notice terminates, in its entirety, the proposed R&PP Act classification published on May 16, 23 and 30, 1984 in the *Spectrum*.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Area Manager, Dixie Resource Area Office.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for a recreation area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the Washington County Water Conservancy District's application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for recreation and public purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: March 17, 1997.

James D. Crisp,

Area Manager.

[FR Doc. 97–7899 Filed 3–27–97; 8:45 am]

BILLING CODE 4310–DQ–M

[ES–960–1910–00–4041] ES–48650, Group 99, Arkansas

Notice of Filing of Plat of Survey; Arkansas

The plat of the dependent resurvey of the north boundary, a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of certain sections of Township 15 North, Range 19 West, Fifth Principal Meridian Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 28, 1997.

The survey was requested by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 28, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Date: March 14, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–7895 Filed 3–27–97; 8:45 am]

BILLING CODE 4710–65–M

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation will be conducting a public meeting for a preliminary review of the comments received on the review of the 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs (Criteria). Members of the Reclamation review team will be available to discuss the comments and Reclamation's analyses and responses to the key issues, and to receive any additional input from the public regarding the analyses and responses. In addition to the public meeting, Reclamation will extend a final comment period through May 16, 1997.

As part of the Criteria review, Reclamation has incorporated an active public involvement process that includes all interested stakeholders. This public process is designed to solicit comments on Criteria provisions that may need revision as the result of actual operating experience, and to disclose the results of the analysis.

Reclamation published a notice in the **Federal Register** on October 31, 1996, asking for written comments and announcing two public meetings to be held in November and December 1996. Detailed written comments were received from 17 interested agencies and the two public meetings provided Reclamation with numerous issues, comments, and concerns regarding possible changes to the Criteria.

DATE AND LOCATION: The public meeting will be held at the following time and location:

Las Vegas, Nevada—Tuesday, April 22, 1997, at 12 noon at McCarran Airport, Commissioners Meeting Room, 5th Floor, Main Terminal.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102 telephone (801) 524–3702, or Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89005, telephone (702) 293–8190.

SUPPLEMENTARY INFORMATION: The 1970 Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs, promulgated pursuant to Public Law 90–537, were published in the **Federal Register** on June 10, 1970. The Criteria provided for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

The 1970 Criteria specified that a formal review take place at least once every five years with participation by such Colorado River Basin state representatives as each Governor may designate, and other parties and agencies as the Secretary of the Interior may deem appropriate. Public Law 90–537 allows the Secretary, as a result of actual operating experience or unforeseen circumstances, to modify the Criteria to better accomplish the purposes of the two basin compacts and the Mexican Water Treaty. The Commissioner of Reclamation is the authorized agent of the Secretary for the purpose of conducting and coordinating this review.

This is the fifth review of the Criteria conducted since its initial promulgation in 1970. Previous reviews of the Criteria were initiated in 1975, 1980, 1985, and 1990. They resulted in no changes to the operating Criteria.

Dated: March 25, 1997.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 97–7948 Filed 3–27–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–42]

Bruce A. Ames, M.D.; Revocation of Registration

On July 22, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bruce A. Ames, M.D. (Respondent), of Redding, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AA5878422, and deny any pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of California.

On August 19, 1996, Respondent filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 21, 1996, Judge Bittner issued an Order for Prehearing Statements. On August 26, 1996, the Government filed a Motion for Summary Disposition, alleging that effective May 12, 1995, the Medical Board of California (Board) placed Respondent's license to practice medicine in the State of California on probation for five years, prohibited him from handling controlled substances, and ordered him to surrender his DEA Certificate of Registration. In his response to the Government's motion, Respondent asserted various defenses. However, Respondent did not deny that the Board prohibited him from handling controlled substances.

On October 28, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of California; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on December 3, 1996, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that effective May 12, 1995, the Board revoked Respondent's license to practice medicine in the State of California, but stayed the revocation and placed Respondent's license on probation for five years subject to various terms and conditions. One of these terms is that ''Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined in the California Uniform Controlled Substances Act.'' In addition, ''Respondent is prohibited from practicing medicine until [he] provides documentary proof * * * that [his] DEA permit has been surrendered to the Drug Enforcement Administration for cancellation * * *.'' Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of California.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 Fed. Reg. 49,195 (1992). In the instant case, the record indicates that Respondent is not currently authorized to handle controlled substances in the State of California. As Judge Bittner notes, ''[i]t is equally clear that because Respondent lacks this state authority, Respondent is not currently entitled to a DEA registration.''

Judge Bittner also properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in California. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Phillip E. Kirk, M.D., 48 Fed. Reg. 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AA5878422, previously issued to Bruce A. Ames, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 28, 1997.

Dated: March 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–7883 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Notice of Registration

By Notice dated August 21, 1996, and published in the **Federal Register** on September 3, 1996, (61 FR 46488), Calbiochem-Novabiochem Corporation, 10394 Pacific Center Court, Attn: Receiving Inspector, San Diego, California 92121–4340, made application to the Drug Enforcement Administration (DEA) to renew its registration to import small quantities of the listed controlled substances to make reagents for distribution to the biomedical research community as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Amphetamine (1100)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II

No request for a hearing was filed concerning Calbiochem-Novabiochem Corporation's 1996 application for renewal of its registration. However, by Notice dated July 5, 1995, Calbiochem-Novabiochem Corporation made application to the Drug Enforcement Administration (DEA) to renew its registration as an importer of the basic classes of controlled substances listed above. Notice of this application was published in the **Federal Register** on July 13, 1995 (60 FR 36165). A registered manufacturer filed a request for a hearing with respect to amphetamine for the 1995 application.

The action on Calbiochem-Novabiochem Corporation's 1995 application to import amphetamine was docketed before Administrative Law Judge (ALJ) Mary Ellen Bittner.

By letter to the ALJ, dated August 31, 1995, the registered manufacturer withdrew its request for a hearing based on Calbiochem-Novabiochem Corporation's agreement to withdraw its application to be registered with DEA to manufacture amphetamine. The ALJ terminated the administrative proceeding on October 2, 1995. As of October 1, 1996, Calbiochem-Novabiochem Corporation has not filed a request for withdrawal of its 1995 application for registration as a bulk manufacturer of amphetamine and, therefore, DEA did not process that application. By letter dated October 25, 1996, Calbiochem-Novabiochem Corporation's request that amphetamine be deleted from its 1996 renewal application for registration.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Calbiochem-Novabiochem Corporation is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above with the exception of amphetamine (1100).

Dated: February 26, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7878 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 96–46]

Charles R. Griffin, Jr., D.D.S. Revocation of Registration

On August 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Charles R. Griffin, Jr., D.D.S. (Respondent), of Tucson, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BG4084593, and deny any pending applications for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to practice dentistry in the State of Arizona.

Respondent timely requested a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 21, 1996, Judge Bittner issued an Order for Prehearing Statements. On October 30, 1996, the Government filed a Motion for Summary Disposition, alleging that effective May 12, 1995, the Arizona State Board of Dental Examiners (Board) revoked Respondent's license to practice dentistry, and as a result, Respondent is not currently authorized to handle controlled substances in the State of Arizona. Respondent did not file a response to the Government's motion. However, in his letter requesting a hearing, Respondent did not dispute that he was not authorized to handle controlled substances, but rather asked for a postponement of the revocation proceeding since he is seeking reinstatement of his license either by judicial action or by approval of his application for reinstatement with the Board.

On November 27, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of Arizona; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on January 8, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that by Order dated May 12, 1995, the Board revoked Respondent's license to practice dentistry in the State of Arizona. Like Judge Bittner, the Acting Deputy Administrator finds it reasonable to infer that because Respondent is not licensed to practice dentistry in Arizona, he is also not authorized to handle controlled substances in that State.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the State in which he conducts business. 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 Fed. Reg. 49,195 (1992). Since the record is clear that Respondent is not authorized to handle controlled substances in the State of Arizona, as Judge Bittner notes, ''[i]t is equally clear that * * * Respondent is not currently entitled to a DEA registration.''

Judge Bittner also properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in Arizona. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Phillip E. Kirk, M.D., 48 Fed. Reg. 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.*, 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BG4084593, previously issued to Charles R. Griffin, Jr., D.D.S., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for renewal of such registration be, and they hereby are denied. This order is effective April 28, 1997.

Dated: March 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–7882 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 22, 1996, Johnson & Johnson Pharmaceutical Partners, HC–02 State Road 933, KMO.1 Mamey Ward, HC–02 Box 19250, Gurabo, Puerto Rico 00778–

9629, made application by renewal, which was received for processing February 14, 1997, to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of sufentanil (9740), a basic class of controlled substance in Schedule II.

The firm plans to manufacture the listed controlled substance for bulk distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 27, 1997.

Dated: February 28, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7879 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 95–25]

Jesus R. Juarez, M.D. Revocation of Registration

On February 27, 1995, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Jesus R. Juarez, M.D. (Respondent), of Fresno, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BJ0925290, and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged as grounds for the proposed action that Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4), and that pursuant to 21 U.S.C. 824(a)(2), Respondent had been convicted of a controlled substance related felony offense.

Respondent, through counsel, filed a timely request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on February 27 and 28, 1996, in Fresno, California. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On July 24, 1996, while the matter was still pending before Judge Bittner, counsel for the Government filed a Motion for Summary Disposition, alleging that Respondent is currently without authority to handle controlled substances in the State of California. The motion was supported by a copy of the Proposed Decision of an Administrative Law Judge for the Medical Board of California recommending that Respondent's state license to practice medicine be revoked, and by a copy of the Decision of the Medical Board dated July 10, 1996, adopting the Proposed Decision effective August 9, 1996.

Respondent filed a response to the Government's Motion for Summary Disposition on August 15, 1996, stating that the Medical Board's decision was not yet final because Respondent had petitioned for a rehearing, and if unsuccessful, would seek judicial review of the Medical Board's action. Respondent, however, did not deny that he was currently without authority to handle controlled substances in the State of California.

Thereafter, on August 21, 1996, Judge Bittner issued her Opinion and Recommended Decision, finding that based upon the evidence before her, Respondent lacked authorization to handle controlled substances in the State of California and therefore, he was not entitled to a DEA registration in that state; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for DEA registration be denied. Neither party filed exceptions to her opinion, and on September 23, 1996, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Acting Deputy Administrator finds that on June 20, 1996, an Administrative Law Judge for the Medical Board of California recommended that Respondent's license to practice medicine in the State of California be revoked. On July 10, 1996, the Medical Board of California adopted the Proposed Decision of the Administrative Law Judge effective August 9, 1996. As Judge Bittner noted, it is reasonable to infer ''that because [Respondent] is not authorized to practice medicine, he is also not authorized to handle controlled substances.'' Respondent argues that the revocation of his license to practice medicine in the State of California is not yet final because he is seeking a rehearing before the Medical Board. However, Respondent does not dispute that he is currently without authority to handle controlled substances in California.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. 21 U.S.C. 801(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993); James H. Nickens, M.D., 57 Fed. Reg. 59,847 (1992); Roy E. Hardman, M.D., 57 Fed. Reg. 49,195 (1992). Accordingly, the Acting Deputy Administrator concurs with Judge Bittner's conclusion that Respondent is not currently authorized to handle controlled substances in the State of California and therefore is not entitled to a DEA registration in that state. The Acting Deputy Administrator concurs with Judge Bittner's recommendation that Respondent's application be denied, but also finds that Respondent's DEA registration must be revoked based upon his lack of authorization to handle controlled substances in California.

The Acting Deputy Administrator finds that Judge Bittner properly granted the Government's Motion for Summary Disposition. Here, the parties did not dispute the fact that Respondent was unauthorized to handle controlled substances in California. Therefore, it is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Dominick A. Ricci, M.D., supra, (finding it well settled that where there is no question of material fact involved, a plenary, adversarial administrative hearing was not required.); see also Phillip E. Kirk, M.D., 48 Fed. Reg. 32,887 (1983), aff'd sub nom *Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

The Acting Deputy Administrator concludes that because Respondent is not entitled to a DEA registration due to his lack of state authorization to handle controlled substances, it is unnecessary to address whether Respondent's registration should be revoked based upon the grounds alleged in the Order to Show Cause.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BJ0925290, previously issued to Jesus R. Juarez, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective April 28, 1997.

Dated: March 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–7881 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 13, 1996, Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application, which was received for processing January 29, 1997, to the Drug Enforcement Administration to renew its registration as an importer of marihuana (7360), a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 21, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7874 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 27, 1997, Mallinckrodt Chemical, Inc., Wallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal which was received for processing on March 4, 1997, to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to manufacture bulk finished products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 28, 1997.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 14, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7877 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby

given that on January 17, 1997, Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Fenethylline (1503)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl] piperidine (7470).	I
Etorphine (except HCl) (9056)	I
Difenoxin (9168)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Etonitazene (9624)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
3-Methylfentanyl (9813)	I
Alpha-methylfentanyl (9814)	I
Beta-hydroxyfentanyl (9830)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (PCC) (8603).	II
Anileridine (9020)	II
Cocaine (9041)	II
Tropacocaine (9045)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 28, 1997.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 832(a) and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 28, 1997.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7875 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 19, 1997, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040) a basic class of controlled substance in Schedule II.

The firm plans to import coca leaves to manufacture bulk controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 28, 1997.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 14, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7876 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 19, 1997, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk cocaine for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 27, 1997.

Dated: March 14, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–7880 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

John C. Turley, III, M.D.; Denial of Application

On July 1, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John C. Turley, III, M.D., of Memphis, Tennessee, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f), as being inconsistent with the public interest. The order also notified Dr. Turley that should not request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA mailed the show cause order to Dr. Turley at the address listed on his application for registration. Subsequently, the DEA received a signed receipt showing that the order was received on July 8, 1996. No request for a hearing or any other reply was received by the DEA from Dr. Turley or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) thirty days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Turley is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 C.F.R. 1301.54(e) and 1301.57.

The Acting Deputy Administrator finds that an investigation in 1986 by the Memphis Metro Narcotics Unit revealed that beginning in at least 1984, Dr. Turley issued prescriptions to three individuals for Dilaudid, a Schedule II controlled substance, in exchange for sexual favors and/or cash and for no legitimate medical purpose. Sometimes, Dr. Turley issued the prescriptions to one of the individuals using the names of her husband or son.

In June 1990, a local police department arrested an individual who attempted to fill a prescription for Lorcet, a Schedule III controlled substance, bearing Dr. Turley's name as the prescribing physician. It was believed that the prescription was forged. Subsequently, Dr. Turley verified that he had in fact issued the prescription to the individual, and therefore all charges against the individual were dismissed. The individual then agreed to cooperate in an investigation of Dr. Turley.

The individual indicated that commencing in late 1986 or early 1987, he began receiving controlled substances and/or prescriptions for such substances from Dr. Turley in exchange for various items such as televisions, stereos, automobile alarms, and guns. On July 19, 1990, the individual, while being monitored by Federal agents, gave Dr. Turley two fully automatic machine guns with silencers in exchange for 100 Ultragesic capsules, a Schedule III controlled substance.

As a result, on August 29, 1990, an information was filed in the United States District Court for the Western District of Tennessee charging Dr. Turley with one count of unlawful distribution of a controlled substance in violation of 21 U.S.C. 841(a)(1) and two counts of unlawful receipt and possession of a firearm. On February 19, 1991, following his guilty plea, Dr. Turley was convicted of all three counts and sentenced to six months imprisonment as to each count to run concurrently, followed by three years of supervised released and was fined $13,000.00. As part of the plea agreement, no charges would be brought against Dr. Turley for his unlawful prescribing of Dilaudid to the three individuals in exchange for sexual favors.

On August 31, 1990, Dr. Turley surrendered his previous DEA Certificate of Registration, and on September 19, 1990, the Tennessee Board of Medical Examiners (Board) issued an Order summarily suspending his license to practice medicine in the State of Tennessee. The Board found that emergency action was necessary ''to prevent [Dr. Turley] from continuing his repeated and dangerous prescribing of addictive or contra-indicated controlled substances and to stop his criminal behavior involving the dispensing or prescribing of controlled substances for illegal reasons.'' On February 14, 1992, the Board ordered that Dr. Turley's medical license remain suspended for at least six months. Thereafter, on July 27, 1992, the Board reinstated Dr. Turley's license to practice medicine, placing him on probation for two years and ordering him to maintain a contract with the Tennessee Medical Foundation's Impaired Physicians Program for two years. Subsequently, on September 14, 1994, the Board terminated Dr. Turley's probation, and as a result, Dr. Turley's medical license is unrestricted.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable, State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16,422 (1989).

Regarding factor one, the recommendation of the appropriate state licensing board, the Acting Deputy Administrator finds that while serious action was taken against Dr. Turley's Tennessee medical license in the past, this license is currently unrestricted. The Acting Deputy Administrator also finds however, that an unrestricted medical license is not dispositive of whether an applicant's registration with DEA is in the public interest.

As to Dr. Turley's experience in dispensing controlled substances, it is undisputed that Dr. Turley seriously abused his privileges as a DEA registrant. He dispensed controlled substances on numerous occasions for no legitimate medical purpose and in exchange for sexual favors and merchandise.

Regarding factors three and four, the record is clear that Dr. Turley was convicted of one count of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). This conviction was the result of the exchange of Ultragesic capsules for the two machine guns with silencers. However, it is evident that Dr. Turley failed to comply with 21 U.S.C. 841(a)(1) on numerous other occasions. He dispensed Dilaudid, an extremely addictive and dangerous substance, to at least three individuals for no legitimate medical purpose in exchange for sexual favors. In addition, he dispensed a variety of controlled substances to an individual for no legitimate medical purpose in exchange for merchandise.

The Acting Deputy Administrator concludes that Dr. Turley's past behavior as a DEA registrant was reprehensible. There is no indication that he can now be trusted to responsibly handle controlled substances, and therefore Dr. Turley's registration with DEA would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application submitted by John C. Turley, III, M.D. for a DEA Certificate of Registration be, and it hereby is, denied. This order is effective April 28, 1997.

Dated: March 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–7884 Filed 3–27–97; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL BANKRUPTCY REVIEW COMMISSION

Meeting

AGENCY: National Bankruptcy Review Commission.

ACTION: Notice of public meeting.

TIME AND DATE: Thursday, April 17, 1997; 8:00 a.m. to 5:30 p.m. and Friday, April 18, 1997; 8:00 a.m. to 5:00 p.m.

PLACE: Ninth Circuit Court of Appeals Courtroom, United States Courthouse—Room 815, 1010 Fifth Avenue, Seattle, Washington. The handicap entrance is located at the Sixth Avenue side of the building.

STATUS: The meeting will be open to the public.

NOTICE: At its public meeting, the Commission will consider general administrative matters and substantive agenda items including consumer bankruptcy, mass torts and future claims, and Chapter 12; Commission working groups will consider the following substantive matters: Chapter 11, consumer bankruptcy, government, service to the estate and ethics, and small business/partnership/single asset real estate. An open forum session devoted to issues related to consumer bankruptcy for public participation is tentatively planned to be held on April 17, 1997 from 8:15 a.m. to 10:30 a.m. In addition, an open forum session devoted to issues related to the United States Trustee Program for public participation will tentatively be held on April 18, 1997 from 4:00 p.m. to 4:30 p.m. This will be followed by a general open forum session for public participation that will tentatively be held on April 18, 1997 from 4:30 p.m. to 5:00 p.m. Dates and times for the open forum sessions may be subject to change.

SUPPLEMENTARY INFORMATION: Any individual or organization who wants to make an oral presentation to the National Bankruptcy Review Commission concerning the Commission's statutory responsibilities may do so at the open forum sessions. Persons who would like to make an oral presentation to the Commission at the open forum sessions should register in advance by contacting the National Bankruptcy Review Commission at (202) 273–1813 no later than Wednesday, April 16, 1997 before 5:00 p.m. EST and providing name, organization (if applicable), address and phone number, or may register in person at the National Bankruptcy Review Commission registration desk at the meeting site by providing name, organization (if applicable), address and phone number. If the volume of requests to speak at the open forum sessions exceeds the time available to accommodate all such requests, the speakers will be chosen on the basis of order of registration.

Oral presentations will be limited to five minutes per speaker. Persons speaking at the open forum sessions are requested, but not required, to supply twenty (20) copies of their written statements prior to their presentations to the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 5–130, Washington, DC 20544. Written submissions are not subject to any limitations.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Susan Jensen-Conklin or Carmelita Pratt at the National Bankruptcy Review Commission, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Suite 5–130, Washington, D.C. 20544; Telephone Number: (202) 273–1813.

Susan Jensen-Conklin,

Deputy Counsel.

[FR Doc. 97–7944 Filed 3–27–97; 8:45 am]

BILLING CODE 6820–36–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Time Warner, Inc., Common Stock, $.01 Par Value; Rights to Purchase Series A Participating Cumulative Preferred Stock) Filed No. 1–12259

March 24, 1997.

Time Warner, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Pacific Exchange (''PCX'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, the Board of Directors of the Company has requested management reduce the Company's operating costs. In that regard, the Company has carefully reviewed its expenditures. It has been determined that the benefit of continued listing on the PCX does not justify the approximate annual cost to the Company.

Any interested person may, on or before April 14, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7869 Filed 3–27–97; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (TPC Corporation, Common Stock, $.01 Par Value) File No. 1–10718

March 24, 1997.

TPC Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company the Board of Directors approved the listing of the Security on the New York Stock Exchange, (''NYSE''). The Security became effective on the NYSE on December 12, 1996. The principal reason for the Board of Directors to approve the new listing was its concern about the current positioning of the Security on the Amex.

Any interested person may, on or before April 14, 1997 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7870 Filed 3–27–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38430; File No. SR–NASD–96–48]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to: (1) Rule 4770 of the SOES Rules, Regarding the Fees Charged for Executions and Cancellation of Orders Entered in SOES, and (2) Rule 7010, Related to Charges for Orders and Cancellation of Orders Entered Into SelectNet

March 21, 1997.

On December 16, 1996, the Nasdaq Stock Market, Inc. (''Nasdaq''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change amends NASD Rule 4770 of the Small Order Execution System (''SOES'') Rules, regarding the fees charged for execution and cancellation of orders entered in SOES, and amends, NASD Rule 7010, related to charges for execution and cancellation of orders entered into SelectNet. Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] Forty-four comment letters were received. The Commission is approving the proposed rule change.

I. Description of Rule Change

The NASD and Nasdaq have evaluated the current fee structures for SOES and the SelectNet system that will be changed to accommodate the new SEC rules regarding a Nasdaq market maker's order handling obligations, *i.e.*, Rule 11Ac1–4 (the customer limit order display rule) and amended Rule 11Ac1–1 (amendments to the quote rule regarding the display of priced orders entered by market makers or specialists into electronic communications networks (''ECNs'')) (collectively, the ''Order Handling Rules'').[4] The NASD and Nasdaq have determined, as explained below, to restructure SOES and SelectNet fees because of charges to their operation as addressed in recently approved NASD proposed rule changes stemming from the SEC's new rules.

A. SOES Fees

SOES is Nasdaq's small order execution system in which orders of 1,000 shares or less are automatically executed against available Nasdaq market makers. In a separate rule filing, the Commission[5] approved on a temporary basis for a limited number of stocks, changes allowing market makers to comply with new obligations to display customer limit orders in their quotations and to execute orders at such quotes only up to actual displayed size, as opposed to an artificial ''tier size.'' In addition, among other changes, the Commission approved a proposal to allow market makers to enter customer market and marketable limit orders into SOES, unlike the previous SOES Rules, which prohibited market maker entry of such orders, unless the market makers self-preference those orders, i.e., direct them to themselves.

Because the Order Handling Rules change the current approach to market maker quoting in Nasdaq securities from a pure dealer-driven quote to a more order-driven quote, the NASD and Nasdaq believe that the disparate application of the current SOES fee structure to the market maker should be changed to take into account the new process by which quotes are established and orders are executed. Accordingly,

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38084 (December 24, 1996), 62 FR 780 (January 6, 1997).

[4] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (Order Handling Rules Adopting Release).

[5] *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997) (publishing approval of SR–NASD–96–43).

the NASD and Nasdaq proposed to establish a charge assessed against both sides to the transaction regardless of the size of the transaction—both the order entry firm and the market maker will be charged for the execution in SOES. Under the new fee structure, if an order entry firm or a market maker were to enter an order of 1,000 shares into SOES, and that order was executed against a single market maker, the firm entering the order (whether a market maker or order entry firm) would be assessed $0.50 and the market maker executing the order would be assessed $0.50. If a SOES order entered by an order entry firm were executed against multiple market makers, the order entry firm would be charged a single $0.50 fee while each market maker participating in the executions would also be charged a $0.50 fee.

The NASD and Nasdaq proposed this charge against both parties to an execution in recognition of the significant market structure changes caused by the SEC rules, the respective use of Nasdaq facilities to support SOES operations by both market makers and order entry firms, and the significant benefits that both sides of the trade receive in the new trading environment in SOES. In the past, the quotations represented solely market maker proprietary interest. In the new environment, market makers may be displaying a priced order under the customer limit order display rule. Because market makers may be quoting a particular price to attract order flow, it is appropriate to assess them a reasonable fee for using SOES to obtain executions.

The NASD and Nasdaq believe that the fee structure is fair and reasonable in that it is similar to transaction charges assessed in the securities industry for automatic executions. SOES provides members with an economically efficient means of accessing public quotations and executing securities transactions at the published prices. Moreover, Nasdaq and the NASD believe that the new fee structure equitably allocates charges to both sides of the transaction that are utilizing the system, both of whom benefit from the execution and both of whom consume resources in utilizing the system. In this new trading environment, there is no reason to allocate all of the costs in operating SOES to the market maker. Instead, the more equitable allocation of costs is to charge both the order entry firm and the order execution firm. In this way, both parties to the transaction are allocated the costs that Nasdaq incurs in developing and operating this system.[6]

B. SOES and SelectNet Cancellation Fees

The NASD and Nasdaq also proposed a new fee related to cancellations entered into SOES and SelectNet.[7] Orders entered into either system that are canceled would be charged $0.25 each. Neither SOES nor SelectNet currently have an order cancellation fee. Nasdaq, however, has taken note of the significant number of orders in both systems that are canceled, sometimes with seconds of order entry. By way of example, on one day, approximately 161,400 SelectNet orders were entered, of which approximately 125,600 were canceled. Only 19,000 were executed. In SOES, of approximately 100,000 orders entered, 30,000 typically are canceled.[8] Moreover, many cancellations occur within a 30 second period after order entry. For example, on November 8, 1996, the heaviest user of SelectNet entered 70,000 orders, and canceled a total of almost 64,000 orders, of which 30,000 were canceled within 30 seconds of order entry. Such use of the system requires that Nasdaq be configured to handle heavy SOES and SelectNet use without resulting executions. In recognition that order cancellations consume significant system resources, Nasdaq proposed a cancellation fee to allocate equitably the communications and systems costs associated with the Nasdaq network among all firms that utilize the system.

II. Summary of Comments

The Commission received a total of forty-four comment letters on the proposal. These letters were from Instinet Corporation (''Instinet''),[9] Singer Zamansky LLP (''Singer''),[10] Momentum Securities, Inc. (''Momentum''),[11] Grossman & Co. (''Grossman''),[12] David K. Whitcomb (''Whitcomb''),[13] and A.J. Michaels & Co., LTD (''A.J. Michaels'').[14] The remaining thirty-nine comment letters were from Castle Securities (''Castle'') and its associated persons, all of which stated their agreement with the Whitcomb Letter.[15] The NASD addressed the comments in a letter to the staff.[16]

A. SOES Order Entry Fee

Several commenters objected to the $0.50 fee on the entry of an order into SOES because Nasdaq did not justify the fee on the basis of Nasdaq's cost of running the system.[17] Nasdaq responded that the shift in the fees is a reallocation of the $1.00 SOES fee previously approved by the Commission as reasonable in relation to the operation of the SOES system.[18] Nasdaq further states that while allocating the $1.00 fee to market makers only may have been justified when the quotes represented only a market maker's interest, because the quotation that an order entry firm is accessing through SOES on behalf of its customer may now represent an order from another customer, it is not reasonable to impose a fee that favors one set of customers over another.[19]

Several commenters expressed the concern that the reallocation of fees may harm customers that currently use SOES to obtain executions because it will be more costly to execute their orders

[6] Under NASD Rules, members are permitted to either absorb the costs assessed, or to pass the fee along to the ultimate customer.

[7] It should be noted that SelectNet fees otherwise will remain as currently structured. The SelectNet transaction fee applies to both sides of the transaction. Moreover, the fee will apply to all parties using the system, including electronic communications networks whose priced orders are accessed by NASD members entering orders into SelectNet.

[8] Data from November 20, 1996.

[9] Letter from Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 10, 1997 (''Instinet Letter'').

[10] Letter from Linda Lerner, Esq., Singer Zamansky LLP, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1997 (''Singer Letter'').

[11] Letter from Elizabeth Erwin, President, Momentum Securities, to Jonathan G. Katz, Secretary, SEC, dated January 27, 1997 (''Momentum Letter'').

[12] Letter from Dennis Grossman, President, Grossman & Co. Investment Management, to Jonathan G. Katz, Secretary, SEC, dated January 27, 1997 (''Grossman Letter'').

[13] Letter from David K. Whitcomb, Professor of Finance, Graduate School of Management, Rutgers University, to Jonathan G. Katz, Secretary, SEC, dated January 17, 1997 (''Whitcomb Letter'').

[14] Letter from Michael F. Frey, President, A.J. Michaels & Co., LTD., to Jonathan G. Katz, Secretary, SEC, dated January 29, 1997 (''A.J. Michaels Letter'').

[15] Letters from Michael T. Studer, Mary B. Nolan, Leslie S. Roth, Raymond Snediker, Melissa Goez, Noel Meeks, Ray Postle, Teresa Herbert, Wycliffe Falconer, Victor Soare, Glenn Perkins, Edward R. Namer, Daniel Ledven, Ira Karaba, William W. Curran, M. Hammarstron, George Herbert, Celestine Pugliese, Louis A. Farley, Fausto Pugliese, Llewlyn Reid, Frank Ferrar, Robert Stewell, Robert Robertson, Christine Achatz, Georgene Deluca, Joseph Giordano, Frank Giraco, Paul Giraldi, Dale Morisco, Shakespeare Newsome, Charlie Rauch, Cindy Sarelis, Nick Abadiotakis, Harry W. Zacher, Jr., Walter K. Gartner, Charles S. Kafeiti, Tony S. Kafeiti, and Steven Diaz to Jonathan G. Katz, Secretary, SEC, all dated January 28, 1997.

[16] Letter from Robert E. Aber, General Counsel, Nasdaq, to Ivette Lopez, Esq., Assistant Director, Division of Market Regulation, SEC, dated March 3, 1997 (''Nasdaq Letter'').

[17] *See* Singer Letter, Momentum Letter, Grossman Letter, and A.J. Michaels Letter.

[18] *See* Nasdaq Letter.

[19] *Id.*

through SOES.[20] Nasdaq responds that it has acted to properly balance the fee structure to minimize the likelihood that one set of customers may obtain an unfair advantage over another set of customers. Nasdaq also notes that nothing in the fee proposal requires an order entry firm that is being assessed a fee to pass that fee on to its ultimate customer.[21] Several commenters noted the negative impact on their profits of the fees if they do not pass them along to their customers.[22] Nasdaq responds that this argument is not sufficient justification for allocating the fee only to market makers and their limit order customers.[23]

Several commenters argued that order entry customer costs will increase because fees will be based on each execution that the customer receives, and because SOES orders may be executed against multiple market makers those customers will have to pay $0.50 for each such execution.[24] Nasdaq states that this assertion is based on an erroneous reading of the proposal, and notes that customers will be charged $0.50 only for each total order that is executed. Commenters also argued that overall costs to customers may increase because customer orders executed through SOES may be partially filled, with the result that the remainder of the order must be executed through SelectNet at an additional fee.[25] Nasdaq acknowledges that customers that use multiple systems will incur charges for such use, but believes that firms choosing to use multiple systems to obtain executions should have to pay a reasonable fee for using each system.[26]

B. SOES and SelectNet Cancellation Fee

Commenters criticized the $0.25 ''cancellation'' fee for SOES and SelectNet orders as an unfair charge, and in particular criticized Nasdaq's example of the number of cancellations by a specific firm on a particular day without regard to whether this was an average day, or one with an unusually high number of cancellations.[27] Nasdaq reiterated its belief that those that use a system in such a way as to place a burden on that system should be required to pay for that use.[28] Nasdaq stated that cancellations create traffic in Nasdaq's network and computer processors, and, accordingly, those system users that cancel orders should be required to pay for that use.[29]

C. SelectNet Fees for ECNs

Instinet objected to the NASD's statement in the notice of proposed rule change regarding the imposition of SelectNet charges on ECNs.[30] Specifically, the NASD stated that the $2.50 per trade SelectNet fee will apply to all parties using the system, including ECNs whose priced orders are accessed by NASD members entering orders into SelectNet. Instinet indicated that in making this statement, the NASD has made a unilateral decision that is inconsistent with the Commission's directives to self-regulatory organizations in implementing the Order Handling Rules to ''work expeditiously with ECN's * * * to develop rules or understandings of general applicability'' in constructing a means for compliance with the ECN Display Alternative.[31] Nasdaq responds that in the course of negotiating contracts with ECNs that have sought to display their orders in Nasdaq pursuant to the ECN Linkage, Nasdaq has discussed the matter of fees with the ECNs and arrived at a temporary arrangement regarding SelectNet fees when ECNs execute orders directed to them through the SelectNet Linkage. Nasdaq states, however, that because ECNs are operated by broker-dealers that are NASD members, ECN's sponsors are subscribers to Nasdaq's services (including SelectNet) and are thus subject to general NASD rules, including the fee structure. Nasdaq further states that the footnote was intended to indicate that the SelectNet fee applies to all NASD members that use the service, unless other arrangements are arrived at.[32]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and Nasdaq and, in particular, the requirements of Section 15A, and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act, which requires that ''the association provide for the equitable allocation of reasonable dues, fees, and other charges among members * * * and other persons using any facility or system which the association operates or controls;'' with Section 15A(b)(6), which requires that the rules of the association be ''designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market;'' and with Section 15A(b)(9) of the Act, which requires that the rules of the association ''not impose any burden on competition not necessary or appropriate in furtherance of [the Act].''

The Commission finds that the NASD and Nasdaq's changes to the current SOES fee structure are consistent with the Act. Specifically, the Commission agrees that the significant changes in the process by which quotes are established and orders are executed resulting from the Commission's Order Handling Rules[33] and the NASD's changes to SOES and the SelectNet recently approved by the Commission[34] warrant a review of SOES and SelectNet fees. In the dynamic environment created by the Commission's Order Handling Rules, the Commission finds that it is reasonable for the NASD to reallocate SOES and SelectNet charges to account for the new source of quotes and the manner in which the systems are being used. The Commission finds the proposed fee of $0.50 to the order entry firm and each market maker participating in the execution of a transaction is an equitable allocation of fees to both sides of the transaction for their use of SOES facilities. The Commission does not believe that the fees inequitably distinguish between market makers and other NASD members, such as order entry firms. The Commission notes that both the market maker and the order entry firm benefit from an execution through SOES at the market maker's quote. Moreover, under the Order Handling Rules, customer orders could be on both sides of a SOES transaction, and so it is equitable to charge both customers for the execution services. While the NASD could have designed its fees in a variety of ways, the Commission finds that the approach adopted results in a non-discriminatory and equitable allocation of fees among market makers and other SOES users. Finally, the Commission also finds that the fee does not impose a burden on competition not necessary or appropriate in furtherance of the Act.

[20] *See* Singer Letter, Momentum Letter, and Grossman Letter.

[21] *See* Nasdaq Letter.

[22] *See* Grossman Letter.

[23] *See* Nasdaq Letter.

[24] *See* Singer Letter.

[25] *See* Singer Letter, A.J. Michaels Letter.

[26] *See* Nasdaq Letter.

[27] *See* Singer Letter, A.J. Michaels Letter.

[28] *See* Nasdaq Letter.

[29] *Id.*

[30] *See* Instinet Letter.

[31] Order Handling Rules Adopting Release, *supra* note 4 at 96.

[32] *See* Nasdaq Letter.

[33] *See* Order Handling Rules Adopting Release, supra note 4.

[34] *See* supra note 5.

Anyone using SOES, whether a market maker displaying its own quotes or a customer limit order, or an order entry firm, who effects a transaction will have to pay $0.50 per order. The cost of using SOES will be the same for all users.

The Commission also finds the institution of a charge of $0.25 for each cancellation entered into SOES and SelectNet to be consistent with the Act. The broadcast of orders that are subsequently cancelled creates the need for increased system capacity in order to ensure the smooth and efficient operation of SOES and SelectNet. The Commission finds that the $0.25 fee imposes a portion of the cost of maintaining system capacity to handle large numbers of cancellations to those firms that create the need for such capacity. The Commission finds that the cancellation fee does not impose a burden on competition not necessary or appropriate in furtherance of the Act. All users of the two systems will bear the same cost for cancellation of orders.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–96–48) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7871 Filed 3–27–97; 8:45 am]

BILLING CODE 8010–01–M

[35] 17 CFR 200.30–3(a)(12).

[Release No. 34–38429; File No. SR–NASD–97–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Elimination of the Prohibitions Against NASD Members Accepting Stop Orders and Stop Limit Orders in Exchange-Listed Securities

March 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 10, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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

Currently, paragraph (i)(1) of NASD Rule 6440, ''Trading Practices,'' prohibits NASD members from accepting stop orders[1] in eligible securities.[2] NASD Rule 6440(i)(2) currently allows members to accept stop limit orders[3] in eligible securities where the stop price and the limit price are the same. The NASD proposes to amend NASD Rule 6440(i) to: (1) Allow members to accept stop orders in eligible securities; and (2) eliminate the requirement that the stop price must equal the limit price in order for a member to accept a stop limit order in an eligible security. Below is the text of the proposed rule change. Additions are italicized; deletions are bracketed.

NASD Rule 6440

(a)–(h). No change.

(i) (1) *A* [No] member [shall] *may, but is not obligated to,* accept a stop order in an eligible security.

(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

(2) *A* member[s] may, *but is not obligated to,* accept stop limit orders in eligible securities [where the stop price and the limit price are the same]. When transactions occur at the stop price, the order to buy or sell becomes a limit order at the stop price.

(j) No change.

* * * * *

[1] A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price. Conversely, a sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

[2] Under NASD Rule 6410(d), ''eligible securities'' means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange (''Amex'') or the New York Stock Exchange (''NYSE''), and securities listed on the regional stocks exchanges which substantially meet the original listing requirements of the Amex or the NYSE.

[3] A buy stock limit order is an order to buy that becomes a limit order at the limit price when a transaction occurs at the stop price. Conversely, a sell stop limit order is an order to sell that becomes a limit order at the limit price when a transaction occurs at the stop price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD proposes to amend NASD Rule 6440 to eliminate current restrictions on the ability of NASD members to accept stop orders and certain stop limit orders in eligible securities. Currently, NASD Rule 6440(i)(1) provides that no NASD member shall accept a stop order in an eligible security; NASD Rule 6440(i)(2) provides that no NASD member shall accept a stop limit order in an eligible security unless the stop price and the limit price are the same. Under the proposed rule change, NASD members will be allowed to accept stop orders in eligible securities and stop limit orders where the stop price and the limit price are not the same. The proposal also clarifies that NASD members are not obligated to accept stop orders or stop limit orders.

The NASD believes there is no economic or regulatory reason to preclude or restrict investors from placing stop orders or stop limit orders in eligible securities. In this connection, the NASD notes that there are no comparable restrictions on the placement of these types of orders in securities listed on The Nasdaq Stock Market (''Nasdaq''). Just as investors in Nasdaq securities are able to receive the protections and benefits that result from placing stop orders and stop limit orders, the NASD believes that investors in the third market should be able to receive the same benefits and protections from placing these types of orders. In particular, through the placement of stop orders and stop limit orders, the NASD believes that investors will be better able to implement their investment strategies and manage their portfolios. Accordingly, the NASD believes its proposal will enhance the protection of investors and the integrity of the market.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, as noted above, because the NASD believes the proposed rule change will better enable investors to implement their investment strategies and manage the risks associated with their portfolios, the NASD believes the proposal will enhance the protection of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NASD–97–20 and should be submitted by April 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7873 Filed 3–27–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38428; File No. SR–NSCC–97–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Modify NSCC's Rules To Permit Unit Investment Trusts To Be Processed Through Fund/SERV, Networking, and Mutual Fund Commission Settlement Services

March 21, 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 National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–97–02) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's rules in order to permit unit investment trusts (''UITs'') to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services, which collectively constitute NSCC's Mutual Fund Services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A group of NSCC participants, bank trustees, and industry organizations such as the Securities Industry Association's Securities Operation Division, the Regional Municipal Operations Association, and National Unit Trust Association have requested that NSCC permit UITs to be eligible for processing through its Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.[3] Such eligibility will allow broker-dealers that are Mutual Fund Services only members (*i.e.*, primarily bank broker-dealers and insurance company subsidiaries) and therefore, that are not permitted to process these transactions through NSCC's continuous net settlement (''CNS'') system to process UIT trades through the Fund/SERV, Networking, and Mutual Fund Commission Settlement systems. Currently, UITs are eligible for NSCC processing through NSCC's CNS system only. However, because Mutual Fund Services only members are not permitted access to NSCC's CNS system, they must settle UIT trades ex-clearing with their UIT

[4] 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 submitted by NSCC.

[3] For a complete description of NSCC's Fund/SERV, Networking, and Mutual Fund Commission Services, refer to Securities Exchange Act Release Nos. 31937 (March 1, 1993), 58 FR 12609 [File No. SR–NSCC–92–14] (order approving proposed rule change regarding Fund/SERV system); 26376 (December 20, 1988), 53 FR 52546 [File No. SR–NSCC–88–08] (order approving Networking); and 31579 (December 17, 1992), 57 FR 60018 [File No. SR–NSCC–92–13] (order approving the Mutual Fund Commissions Settlement System and consolidating the Mutual Fund Commissions Settlement, Fund/SERV, and Networking Systems under NSCC's Mutual Fund Services.

positions held with a trustee in book-entry form.

In terms of the settlement process, UIT transactions will be processed through NSCC's Mutual Fund Services in the same manner as they are processed in the CNS system. However, UIT transactions processed through any Mutual Fund Services will not be guaranteed. If a Mutual Fund Services only member wants its UIT transactions submitted to NSCC to be guaranteed, such member must apply to NSCC for a full-service membership, meet the applicable membership requirements, and submit such transactions to NSCC's CNS system.

NSCC believes that by permitting these transactions to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commissions Settlement systems, Mutual Fund Services only members will no longer have to handle UIT trades through exception processing, which will result in reduced processing costs and increased standardization.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, will protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR–NSCC–97–02 and should be submitted by April 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–7872 Filed 3–27–97; 8:45am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2932]

State of Arkansas; (AMENDMENT NO. 2)

In accordance with a notice from the Federal Emergency Management Agency, dated March 18, 1997, the above-numbered Declaration is hereby amended to include Baxter County in the State of Arkansas as a disaster area due to damages caused by severe storms and tornadoes beginning on March 1 and continuing through March 4, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Fulton and Marion in the State of Arkansas, and Ozark County in the State of Missouri may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

The number previously assigned to this disaster for physical damage is 293212. The numbers previously assigned to this disaster for economic injury are: 939000 for Arkansas, and 939100 for Missouri. All other information remains the same, i.e., the termination date for filing applications for physical damage is May 1, 1997, and for loans for economic injury the deadline is December 2, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 20, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–7888 Filed 3–27–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster No. 2937]

State of Tennessee; (AMENDMENT No. 1)

In accordance with notices from the Federal Emergency Management Agency, dated March 14 and March 17, 1997, the above-numbered Declaration is hereby amended to include the Counties of Chester, Davidson, Dickson, Gibson, Houston, Lauderdale, Shelby, Stewart, Sumner, and Weakley in the State of Tennessee as a disaster area due to damages caused by heavy rain, tornadoes, flooding, hail and high winds beginning on February 28, 1997 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Fayette, Hickman, Humphreys, Macon, Rutherford, Tipton, Trousdale, and Wilson in the State of Tennessee; De Soto and Marshall in the State of Mississippi; and Allen, Calloway, and Simpson in the Commonwealth of Kentucky. Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The numbers assigned to this disaster for economic injury are 943500 for Kentucky, and 943400 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 18, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–7890 Filed 3–27–97; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster #2938]

State of West Virginia; (AMENDMENT No. 1)

In accordance with a notice from the Federal Emergency Management Agency, dated March 15, 1997, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on February 28, 1997 and continuing through March 15, 1997.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 6, 1997, and for loans for economic injury the deadline is December 8, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 20, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–7889 Filed 3–27–97; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Program Announcement No. SSA–ORES–97–1]

Federal Old-Age, Survivors, and Disability Insurance; Fiscal Year 1997 Funds for Section 1110 Research Grants Availability

AGENCY: Social Security Administration

SUMMARY: The Social Security Administration (SSA) announces that competing applications will be accepted for new research grants authorized under Section 1110 of the Social Security Act. This announcement, consisting of three parts, describes the nature of the grant activities and gives notice of the anticipated availability of fiscal year (FY) 1997 funds in support of the proposed activities. Part I discusses the purpose of the announcement and briefly describes the application process. Part II describes the programmatic priorities under which SSA is soliciting applications for funding. Part III describes the application process and provides guidance on how to submit an application.

DATES: The closing date for the receipt of grant applications in response to this announcement is June 26, 1997.

FOR FURTHER INFORMATION CONTACT: *For information on the application or for an application kit:* Mr. E. Joe Smith, Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207; telephone (410) 965–9503.

For information on the program content of the announcement: Ms. Eleanor Cooper, Coordinator for Extramural Research; Office of Research, Evaluation and Statistics; Social Security Administration; 4–C–15 Operations; 6401 Security Boulevard; Baltimore, Maryland 21235; telephone (410) 966–9824.

Part I. Purpose and the Grants Process

A. Program Purpose

This research is intended to add to existing knowledge about components of economic security and about the changing economic status of the aged or disabled, with emphasis on Social Security beneficiaries. Policy makers and social scientists are potential users of the results.

In general, SSA will fund a select number of projects in the following areas:

1. Research that makes use of the New Beneficiary Data System to examine changes in the economic security of beneficiaries over time—in particular, changes related to one or more of the following: employer-provided pensions, post-retirement employment, and changing levels of income from assets.

2. Research on ''integration'' provisions of private pension plans (benefit formulas that reduce pension payments to individuals by some portion of their Social Security benefits), the effect of these provisions on income inequality among the aged, and the impact of recent changes in integration provisions.

B. FY 1997 Grant Process

The grant application process for FY 1997 will consist of a one-stage, full application. Applications are limited to 20 single- or 40 double-spaced pages (excluding resumes, forms, etc.) and must relate to the selection criteria established for review of applications.

Priority areas in this announcement permit applicants to propose research efforts from 12 to 24 months in duration. In item 11 of the Face Sheet (page 1 of form SSA–96–BK) indicate the priority area under which the application is submitted; i.e., ORES–97–001 or ORES–97–002.

Part II. Priority Research Areas

In particular, the following projects will be considered for funding:

A. Analyses of the New Beneficiary Data System—ORES–97–001

This project is intended to encourage research using the New Beneficiary Data System (NBDS), a data base developed by SSA over the past decade to study the changing circumstances of aged and disabled beneficiaries. Based initially on a survey of new beneficiaries and spouses in 1982, the data set was expanded through followup interviews in 1991 with those included in the original survey, and with information from administrative records (on benefits, covered earnings, Supplemental Security Income, and Medicare). With the exception of the Medicare records, all administrative data have been obtained both for primary respondents and for spouses.

The original survey design included representative samples of new Social Security beneficiaries who filed for benefits as retired workers, disabled workers, wives, widows, divorced wives, and surviving divorced wives. There was also a representative sample of persons aged 65 or older who were entitled to Medicare benefits but who had not yet received Social Security cash benefits. The aged sample was, for the most part, in its mid- to late-60's in 1982 and in its mid- to late-70's in 1991.

The original interview covered a wide range of topics, including demographic characteristics, marital and childbearing history, employment history, current income and assets, and health. The followup interview updated the comprehensive profile of economic circumstances obtained in the original survey, and added or expanded sections on health, family contacts, and post-retirement employment. The interviews also explored major changes in life circumstances that might underlie changes in economic status (such as widowhood or divorce, work cessation, migration, and the sale of a home).

As with other survey-based sources, many data elements, especially those relating to income and assets, initially had significant numbers of refusals, ''don't knows,'' and other forms of nonresponse; and missing data were imputed for both the 1982 and 1991 waves. While these cross-sectional imputations reflected the current state of the art, they did not take advantage of the fact that in many cases valid data were available in one wave when missing in the other. Utilizing these partial responses, a new set of expressly longitudinal imputations has been prepared and incorporated in the NBDS.

Background material and a compilation of studies based on the original survey are available. Additional reports on the NBDS have been published in recent years in the *Social Security Bulletin*. Much of the NBDS data and documentation are available on the Internet at www.ssa.gov/statistics/

ores—home.html. Further information about the data can be obtained from Howard Iams, telephone (202) 282–7092.

Proposals for research utilizing the longitudinal data of the NBDS will be considered for funding. As many as two grants may be awarded. Each grant will support research that deals with one or more of the following subjects:

1. *Changes in the Role of Employer-Provided Pensions*—The NBDS contains a wealth of information on employer-provided pensions among aged and disabled beneficiaries over time. Research will illuminate the changing role of employer-provided pensions in the economic status of these beneficiaries (aged, disabled, or both)—in general, changes in the number and characteristics of pension recipients, and changes in the amounts and importance of their benefits. Of particular concern is the impact of inflation on the value of pension benefits over time. Another important issue concerns survivor benefits from employer pensions—both the incidence and level of such benefits among women who had become widowed between the two surveys, and the economic impact on widows who were receiving or not receiving benefits from their late husbands' pensions.

The importance of Social Security to aged and disabled beneficiaries over time can best be evaluated in the context of the other three primary sources of economic security: pensions, employment, and assets. Increased knowledge in these areas is imperative for analysts and policy makers as they continue to explore the implications of various Social Security reform proposals.

2. *Analysis of Earnings and Work Among the Aged*—Research has established that retirement is not necessarily an all or nothing process but frequently occurs in stages. While it has been suggested that work among the aged is ''the poor man's pension,'' we know little about the nature of such work and its importance to economic well-being. The income and asset data in the NBDS should make it possible to examine the role of earnings in economic well-being at the time of the two interview waves. Appropriate questions to address include: To what extent do retirees continue working and why? What type of work is done by partial retirees? When persons returned to work, did their work differ in some systematic manner from their previous work? Did program rules limit their hours of work (for example, did earnings tend to be limited to the annual exempt amount or did work effort increase when the Earnings Test no longer applied at age 70)? Of particular interest are differing patterns of post-retirement employment between lower and higher income beneficiaries.

Employer-provided pensions are an important source of retirement income. The provisions of these plans are not static, but change in response to socioeconomic developments. In order to forecast the incomes of future retirees—and the role to be played by Social Security and other government income maintenance programs targeted at the elderly—it is important to understand the evolution of private pension arrangements, especially integration rules that directly link pension benefits to Social Security benefits.

3. *Changes in Assets Over Time*—Assets, and the income generated from assets, are an important determinant of differing levels of economic security among retirees (and, in cases of earlier withdrawal from the labor force, among the disabled as well). Furthermore, changes in assets may be linked to changes in economic well-being—for example, when beneficiaries find it necessary to spend down their assets during episodes of poor health or other adverse circumstances. The nature and importance of these changes, however, is not well understood. Some economic life-cycle models assume that assets are accumulated during the working years and systematically spent down subsequently. On the other hand, anecdotal evidence suggests that assets may be ''hoarded'' by many of the elderly as a precaution against possible future needs or that assets may be unexpectedly depleted due to changing life circumstances. The NBDS makes it possible to conduct more empirically grounded analyses of the causes and magnitude of the changing role of assets among aged or disabled beneficiaries.

Grant proposals must be based on well-developed rigorous analysis, including at a minimum the elements specified as evaluation criteria later in this announcement.

Applications may be submitted for multi-year funding not to exceed 24 months in duration. Applications for multi-year funding should include a budget for the first budget period (not to exceed 12 months). If the application is approved, a grant will be awarded for the initial 12-month budget period. Funding will subsequently be provided for up to an additional 12-month budget period dependent on satisfactory performance of the initial budget period, continued relevance of the project, and the availability of FY funds.

It is anticipated that up to $300,000 will be allocated to fund one or more projects under this priority area for the initial 12-month budget period.

B. Integration of Social Security and Private Pension Benefits—ORES–97–002

The Tax Reform Act of 1986 instituted a number of new requirements for integration rules for Social Security and private pension benefits. One change limits the maximum Social Security offset to 50 percent of the pension amount specified by defined benefit plans. This change should have increased retirement benefits for lower paid workers covered by these kinds of plans.

Proposals are sought for research that will evaluate the effect of the new integration rules on the distribution of retirement income. That is, we seek to learn how retirees at different income levels might have been differentially affected by these changes. Specifically, how much have retirement incomes changed as a result of this legislation, and which family income deciles have benefited from the changes? The project should explore the economics of and rationale for the existence of private pension plan integration provisions.

It should further identify any trends and their causes (e.g., to what extent has the shift from defined benefit plans to defined contribution plans had an impact on the numbers of workers with integrated plans?). What factors are associated with the occurrence of integration provisions in private pension plans? For example, is plan integration associated with employer characteristics, the level of workers' total compensation, with the mix of employer-employee contributions, or with the generosity of the pension plan? How do plan integration rules affect other types of pension plan provisions (e.g., maximum excess allowances)? How does plan integration affect the post-retirement distribution of income and what have been the distributional consequences of recent changes in integration rules?

Grant proposals must be based on well-developed rigorous analysis. Applicants may submit applications for funding not to exceed 12 months in duration.

We anticipate that up to $100,000 will be allocated to fund one or more projects for up to 12 months under this priority area.

Note: To foster the sharing of research, principal investigators for each grant awarded will be required to (1) include in the final report an executive summary which SSA could publish in the quarterly Social Security Bulletin and (2) discuss the results

of their research with SSA staff. Funds should be included in the grant budget for a meeting at the SSA office of research, evaluation and statistics, Washington, D.C.

Part III. Application Process

A. Eligible Applicants

Any State or local government, public or private organization, nonprofit or for-profit organization, hospital, or educational institution may apply for a grant under this announcement. Applications will not be accepted from applicants which do not meet the above eligibility criteria at the time of submission of applications.

Individuals are not eligible to apply. For-profit organizations may apply with the understanding that no grant funds may be paid as profit to any grant recipient. Profit is considered as any amount in excess of the allowable costs of the grant recipient. A for-profit organization is a corporation or other legal entity which is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf.

Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards.

B. Availability and Duration of Funding

SSA anticipates allocating up to $300,000 to fund the initial 12-month budget period of a 24-month grant for one or more projects in priority area ORES–97–001, ''Analyses of the New Beneficiary Data System.'' SSA anticipates allocating up to $100,000 to fund the 12-month budget period for one or more projects in priority area ORES–97–002, ''Integration of Social Security and Private Pension Benefits.''

C. Grantee Share of the Project Costs

Grant recipients receiving assistance to conduct these research projects are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No grant will be awarded that covers 100 percent of the project's costs.

D. The Application Process for Proposals Requesting Grant Funds

Organizations wishing to compete for grants under this announcement must submit an application by June 26, 1997. Applications received in response to this announcement will be reviewed by Federal and non-Federal personnel.

Successful applicants may expect funding during the fourth quarter of FY 1997 (prior to September 30, 1997).

1. Availability of Application Forms

Application kits which contain the prescribed application forms for grant funds are available from the Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207; Mr. E. Joe Smith, Grants Management Officer; telephone (410) 965–9503.

When requesting an application kit, the applicant should refer to program announcement number SSA–ORES–97–1 and the date of this announcement to ensure receipt of the proper application kit.

2. Additional Information

For additional information concerning project development, please contact Ms. Eleanor Cooper, Coordinator for Extramural Research; Office of Research, Evaluation and Statistics; Social Security Administration; 4–C–15 Operations; 6401 Security Boulevard, Baltimore, Maryland 21235; telephone (410) 966–9824.

3. Application Submission

All applications requesting Federal grant funds must be submitted on the standard forms provided by the Grants Management Team. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the grant award.

As part of the project title (page 1 of the application form SSA–96–BK, item 11), the applicant must clearly indicate that the application submitted is in response to this announcement (SSA–ORES–97–1) and must show the appropriate priority area project identifier (i.e., ORES–97–001 or ORES–97–002).

Applications must be submitted to: Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207.

4. Application Consideration

Applications are initially screened for relevance to this announcement. If judged irrelevant, the applications are returned to the applicants. Applications that conform to the requirements of this program announcement will be reviewed and evaluated against the criteria specified in No. 6(b) of this announcement and evaluated by Federal and non-Federal personnel. The results of this evaluation will assist SSA in selecting the applications to be funded.

5. Application Approval

Grant awards will be issued within the limits of Federal funds available following the approval of the applications selected for funding. The official award document is the ''Notice of Grant Award.'' It will provide the amount of funds awarded, the purpose of the award, the budget period for which support is given, the total project period for which support is contemplated, the amount of grantee financial participation, and any special terms and conditions of the grant award.

6. Criteria for Screening and Reviewing of Applications

(a) Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

(1) *Number of Copies:* An original signed application and two copies must be submitted. Five additional copies are optional and will expedite processing of the grant application.

(2) *Length:* The narrative portion of the application (Part III of form SSA–96-BK) must not exceed 20 single- or 40 double-spaced pages, exclusive of resumes, forms, etc., typewritten on one side only using standard size (8½″ × 11″) paper. Applications should neither be unduly elaborative nor contain voluminous documentation.

(3) *Non-Federal Contribution (Match):* Grant recipients must contribute towards the project costs (cash or in-kind). Generally, 5 percent of the total costs is acceptable. SSA will not provide 100 percent or total funding for any project grant.

(b) Evaluation Criteria

Applications which pass the screening process will be reviewed by at least three individuals. Reviewers will score the applications, basing their scoring decisions on the criteria shown below. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application. Relative weights for the criteria are shown in parentheses.

(1) Project Objective: (25 Points)

How closely do the project objectives fit those of the announcement? Is the need for the project discussed in terms of the importance of the issues to be addressed? Does it describe how the project builds upon previous research? What is the potential usefulness of the anticipated result and expected benefits to the target groups? What is the

potential usefulness of the proposed project for the advancement of scientific knowledge?

(2) Project Design: (30 Points)

Is the design of the project adequate and feasible as indicated by the appropriateness of the work statement and the technical approach, including: (a) a concise and clear statement of goals and objectives; (b) theoretical analysis of the problem and, if appropriate, hypotheses to be tested and/or parameters to be estimated; (c) specification of data sources; (d) plan for data analysis, including appropriateness of statistical methods to be used; and (e) scheduling of tasks and milestones in the progress of the project? Does the proposal describe specific plans for conducting the project in terms of the tasks to be performed, and how the approach proposed will accomplish the project objectives?

(3) Qualifications: (30 Points)

Do the qualifications of the project personnel, as evidenced by training, experience, and publications, demonstrate that they have the knowledge of subject matter and skills required to competently carry out the research and to produce a final report that is comprehensible and usable? Is the staffing pattern appropriate for the proposed research, linking responsibilities clearly to project tasks?

(4) Organization and Budget: (15 Points)

Are the resources needed to conduct the project specified, including personnel, time, funds, and facilities? Are any collaborative efforts with other organizations clearly identified and written assurances referenced? Is all budget information provided including a description by category (personnel, travel, etc.) of the total of the Federal funds required, and written assurances referenced? Where appropriate, are justifications and explanations of costs provided? Are the project's costs reasonable in view of the level of effort and anticipated outcome? Does the applicant's organization have adequate facilities and resources to plan, conduct, and complete the project?

7. Closing Date for Receipt of Applications

The closing date for receipt of grant applications for Federal funds in response to this announcement is June 26, 1997.

Applications may be mailed or sent by commercial carrier or personally delivered to: Grants Management Team; Office of Operations Contracts and Grants; Office of Acquisition and Grants; Social Security Administration; 1–E–4 Gwynn Oak Building; 1710 Gwynn Oak Avenue; Baltimore, Maryland 21207.

Hand-delivered applications are accepted during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date at the above address; or

(b) Mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the above criteria are considered late applications. SSA will notify each late applicant that its application will not be considered.

Note: Facsimile Copies Will Not be Accepted.

Notice Procedures

Paperwork Reduction Act

This notice contains reporting requirements in the ''Application Process'' section. However, the information is collected using form SSA–96–BK, *Federal Assistance,* which has Office of Management and Budget clearance No. 0960–0184.

Executive Orders 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to Federal agencies providing opportunities for consultation with State and local elected officials on proposed Federal financial assistance or direct Federal development.

(Catalog of Federal Domestic Assistance: Program No. 96.007, Social Security-Research and Demonstration.)

Dated: March 20, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

[FR Doc. 97–7914 Filed 3–27–97; 8:45 am]

BILLING CODE 4190–29–P

Social Security Ruling SSR 97–1p. Title XVI: Supplemental Security Income—Income—When Inheritances Become Income

AGENCY: Social Security Administration.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Acting Commissioner of Social Security gives notice of Social Security Ruling SSR 97–1p. This Policy Interpretation Ruling clarifies the Social Security Administration's longstanding policy that State law must be taken into account in determining the point at which an inheritance becomes income under Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled, of the Social Security Act. That is, the earliest point at which an inheritance can become income under Title XVI is the point at which the individual is free, under applicable State inheritance laws, to spend his or her inheritance (if it is cash) or to convert his or her inheritance to cash (if it is not cash).

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 96.006 Supplemental Security Income.)

Dated: March 21, 1997.

John J. Callahan,

Acting Commissioner of Social Security.

Policy Interpretation Ruling; Title XVI: Supplemental Security Income—Income—When Inheritances Become Income

Purpose: To clarify the Social Security Administration's (SSA) longstanding policy that State law must be taken into account in determining the point at which an inheritance becomes income for purposes of the Supplemental Security Income (SSI) program.

Citations (Authority): Section 1612(a)(2)(E) of the Social Security Act; Regulations No. 16, Subpart K, sections 416.1102, 416.1121(g), and 416.1123(a).

Pertinent History: The point at which something becomes income under the SSI program derives from the regulatory definition of income at 20 CFR 416.1102. Income is something an individual receives and can use to meet food, clothing, or shelter needs. An implicit requirement of this definition is that, for property other than cash to be considered income, the individual who receives it must have the legal right, authority, and power to convert it to cash (by selling it, for example). The point at which something becomes income is, necessarily, the point at which it first meets this criterion.

The earliest point at which a cash inheritance can be used to meet food, clothing, or shelter needs is the point at which State inheritance laws permit the heir to spend it. The earliest point at which inherited property other than cash can be used to meet food, clothing, or shelter needs is the point at which State inheritance laws permit the heir to convert the property (or his or her interest in it) to cash.

In some States, an heir cannot dispose of an inheritance until the estate is closed. When this is the case, the inheritance does not meet the regulatory criteria to be considered income until the estate is closed. In other States, an heir may receive a contingency interest in real property at the time of the decedent's death. The heir can sell this contingency interest immediately, even though perfect title to the property cannot be conveyed until the estate is closed and the value of the property may be reduced accordingly or be difficult to determine. However, when the contingency interest can be valued, this interest meets the regulatory criteria to be considered income at the time of the decedent's death.

Since State law governs the point at which inherited property first meets the regulatory criteria for being considered income, State law must be taken into account in determining the point at which inherited property becomes income under the SSI program. This includes cases in which State law permits an heir to convert inherited property to cash prior to distribution of the assets, since failure to consider such property as income unless and until the assets are distributed would not be consistent with regulations.

Policy Interpretation: The earliest point at which an inheritance can become income under the SSI program is the point at which the individual is free, under applicable State inheritance laws, to spend the inheritance (if it is cash) or to convert the inheritance to cash (if it is not cash).

Effective Date: This Ruling which merely clarifies SSA's longstanding policy on the treatment of inheritances is effective on March 28, 1997.

Cross-Reference: Program Operations Manual System, Part 5, Chapter 008, Subchapter 30, Section SI 00830.550.

[FR Doc. 97–7831 Filed 3–27–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Operating Administrations, DOT.

ACTION: Notice.

SUMMARY: Notice to amend and delete systems of records.

EFFECTIVE DATE: March 28, 1997.

ADDRESSES: Send comments to the Privacy Act Officer, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590

FOR FURTHER INFORMATION CONTACT: Crystal Bush at (202) 366–9713

SUPPLEMENTARY INFORMATION: The Department of Transportation systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, and is published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered systems report.

DOT/OST 003

SYSTEM NAME:

Allegations of Infringement of United States Patents.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the Secretary of Transportation, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe that an agency of the Department of Transportation is infringing a United States patent owned by the individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence alleging that agencies of the Department of Transportation have infringed, or are infringing, United States patents owned by the originators of the correspondence. Copies of replies by the Department Patent Counsel to the originator of the allegation. Copies of correspondence forwarding the allegation to the particular Department agency accused for their comment; their replies to Patent Counsel. Copies of correspondence between the Department of Transportation and the Department of Justice concerning the allegations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 1.57.

PURPOSE(S):

The purpose of the system is document allegations that agencies of the Department of Transportation have infringed, or are infringing, United States patents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of allegations and Patent Counsel's actions thereon.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal ''need to know.''

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing address: Patent Counsel, C–15, U.S. Department of Transportation, Washington, DC 20590.

Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Apply to System Manager.

RECORD ACCESS PROCEDURES:

Apply to System Manager.

CONTESTING RECORD PROCEDURES:

Apply to System Manager.

RECORD SOURCE CATEGORIES:

Patent owners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 008

SYSTEM NAME:

Departmental Advisory Committee Files, DOT/OST.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

U.S. Department of Transportation, Office of the Secretary, Executive Secretariat, 400 7th Street, SW., Room 10205, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Departmental advisory committees and candidates applying for a position on an advisory committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Membership file listing name, address, occupation, committee name, and term of appointment. Biographical information on committee members and applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act.

PURPOSE(S):

The purpose of this system is to maintain membership lists of present, former, and potential members of Department of Transportation advisory committees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To maintain records in accordance with the requirements of the Federal Advisory Committee Act and GSA's Interim Rule on Advisory Committee Management. To prepare required reports to GSA and to the Congress. To answer membership inquiries from Departmental elements, from the Congress, from public and private organizations and individuals. To provide a current list of qualified applicants for vacancies which occur on the advisory committees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All data is stored on a disk which is located inside the processor, with magnetic tape backup. The hard copies will be stored in the Executive Secretariat and will be secured at all times. Access to the records will be by means of identification number and password known only to the user and the system manager.

RETRIEVABILITY:

Records will be retrievable by name or by any of the categories listed under ''Categories of Records.''

SAFEGUARDS:

The records are safeguarded by (1) user identification and password; (2) establishment of permission to view the file by the system or owner of the record; and (3) encryption of documents, records and data elements. All hard copies are stored in a locked storage area and are only accessible by permission of the Committee Management Coordinator.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule 18, Item No. 8(c).

SYSTEM MANAGER(S) AND ADDRESS:

U.S. Department of Transportation, Office of the Secretary, Executive Secretariat, Committee Management Officer, 400 7th Street, SW., Room 10205, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Any individual who wishes to be notified if the system of records contains a record pertaining to him may apply in writing to the System Manager at the above address.

RECORD ACCESS PROCEDURES:

Any individual who wishes to review the contents of a record pertaining to him may apply in writing to the System Manager.

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedures.'' Appeals should be directed to the Secretary of Transportation, if request for modification or deletion is denied.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from (1) committee sponsor; (2) individuals who apply for advisory committee appointments; and (3) persons who recommend them for appointment. Each applicant must complete a Candidate Biographical Information Request form which contains all of the data to be stored in the ''Categories of Records,'' and the individual signs a permission statement authorizing the Department of Transportation to retain such records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 013

SYSTEM NAME:

Employee Management Convenience Files—Office of Inspector General.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, DC 20590.

Office of Inspector General, DOT/OST, Kendall Square, 55 Broadway, Room 1055, Cambridge, MA 02142

Office of Inspector General, DOT/OST, 26 Federal Plaza, Room 3134, New York, NY 10278

Office of Inspector General, DOT/OST, 10 South Howard Street, Suite 4500, Baltimore, MD 21201

Office of Inspector General, DOT/OST, 61 Forsyth Street, SW., Suite 17T60, Atlanta, GA 30303–3104

Office of Inspector General, DOT/OST, 111 N. Canal Street, Room 677, Chicago, IL 60606

Office of Inspector General, DOT/OST, Federal Office Building, Room 9A27, 819 Taylor Street, Fort Worth, TX 76102

Office of Inspector General, DOT/OST, 601 East 12th Street, Room 113, Kansas City, MO 64106

Office of Inspector General, DOT/OST, 201 Mission Street, Suite 2310, San Francisco, CA 94105

Office of Inspector General, DOT/OST, Federal Office Building, Room 644, 915 Second Avenue, Seattle, WA 98174.

Office of Inspector General, DOT/OST, 15000 Aviation Boulevard, Room 1027, Lawndale, CA 90261

Office of Inspector General, DOT/OST, Linpro Center, 900 East 8th Avenue, Suite 201, King of Prussia, PA 19406

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Performance Evaluation Records, Position Descriptions, SF–171s, and Employee Relations Documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 1.23(I).

PURPOSE(S):

The records are maintained to ensure that all appropriate records on an individual's employment, pay, performance, and conduct are retained and are available to agency officials having a need for the information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Employment, pay, performance evaluations, and employee conduct.

Used by supervisor and administrative personnel in preparation of personnel documents. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Safe and file cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Locked safe and files.

RETENTION AND DISPOSAL:

Records disposition schedules developed by the National Archives and Records Administration are applied to these records.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration (JM–1), Office of Inspector General, Department of Transportation, 400 7th Street SW., Suite 9210, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Current employees may have access to contents through the System Manager.

CONTESTING RECORD PROCEDURES:

Current employees may contest contents through the System Manager.

RECORD SOURCE CATEGORIES:

Subject, supervisor, responsible official, personnel and payroll offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 041

SYSTEM NAME:

DOMUS.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Transportation (DOT), Office of the Secretary (OST), Executive Secretariat, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who write, or are referred in writing by a second party, to the Secretary, Deputy Secretary, Deputy Under Secretary, and their immediate offices.

Individuals who are the subject of an action requiring approval or action by one of the forenamed, such as appeal actions, training, awards, foreign travel, promotions, selections, grievances, and discipline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence submitted by, or on behalf of, an individual, including resumes, letters of reference, etc.

Responses to such correspondence.

Staff recommendations on actions requiring approval or action by one of the forenamed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 1.23(j).

PURPOSE(S):

The purpose of the system is provide history of correspondence addressed to and signed by the Secretary and Deputy Secretary of Transportation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate action office within or outside the Department for preparation of a response.

Referral to the appropriate agency for actions involving matters of law or regulation beyond the responsibility of the Department, such as the Civil Service Commission for employee appeals, the Department of Justice in matters of law enforcement, etc.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and—selectively—on microfilm for all records since January 1, 1974.

In hard copy for all records prior to January 1, 1974.

RETRIEVABILITY:

Indexed by name of correspondent, referring individual, and subject category (e.g., ''employment'' for applicants) from January 1, 1974 on.

Indexed by name of correspondent prior to January 1, 1974.

SAFEGUARDS:

Computer microfilm records, and remote reader terminals, which permit random access to the system records, are locked after office hours.

During office hours computer is accessible only through terminals operated by, and under the surveillance of, authorized employees of the Executive Secretary.

RETENTION AND DISPOSAL:

Hard-copy records for 1967–1969 and duplicate microfilms for 1974–1989 are in the custody of National Archives and Records Administration (NARA).

Microfilm Records from 1990 and following are retained in the Departmental headquarters building.

Records are retired to NARA on a space-needed basis.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation (DOT), Office of the Secretary (OST), Executive Secretariat, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager. Helpful information, in addition to the individual's name, includes date(s), subject matter, and addressee(s) of the incoming correspondence, and date(s) and author(s) of the response(s).

RECORD ACCESS PROCEDURES:

Contact System Manager for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Contact System Manager for information on procedures for contesting records. Appeals should be directed to the Secretary of Transportation, if request for modification or deletion is denied.

RECORD SOURCE CATEGORIES:

Correspondence from individual, his representative or sponsor.

Responses to incoming correspondence.

Related material provided for background as appropriate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 101

SYSTEM NAME:

Office of Inspector General, Management Information System (OIG/MIS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active employees of the OIG, with history data on previous employees maintained for 2 years. Present and former DOT employees, DOT contractors and employees as well as grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's current position and employment status, assignments, travel, experience, training, with the following personal data: Name, social security account number, date of birth, service computation date, career status, address, assigned station, job series, education, grade, minority status, and personnel transaction date. Investigative information consists of investigation targets' name and social security account number, organization name, type of investigation, offense data, source of referral data and action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978.

PURPOSE(S):

The purpose of the system is to provide individuals with a need to know with specific information related to (1) time and attendance of employees; (2) workload status reports; (3) security clearance alerts; (4) travel information, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

There will be no external uses. Internally, information will be used as follows: (1) Security clearance notification alerts may be provided to an examined activity in advance of visits by OIG personnel if information to be examined requires a secret clearance or above; (2) time and attendance reports will be used to track temporary duty travel frequency and duration, to categorize indirect time for periodic reports, and to accrue staff hour data on assigned projects; (3) planned annual leave reporting will be used by various managers for workload planning and travel scheduling; (4) assignments information and workload status information will be used by managers to control audits and investigations, and to maximize effectiveness of staff resources; (5) miscellaneous personnel information will be used by staff managers to determine training needs, promotional eligibility, education and background, and professional organization participation; (6) information will be used to produce resource management reports; (7) travel information will be used by managers to control temporary duty travel, travel costs and issuances of travel orders; and (8) investigative information is collected and maintained in the administration of the Inspector General Act of 1978 (Pub. L. 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for investigative case management.

Used by DOT Officials in the administration of their responsibilities. See also Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active reports on magnetic disk, with backup active records and inactive records maintained on magnetic tape.

RETRIEVABILITY:

Records will be retrievable through employee social security number, by name, or incident title, with selected records having certain secondary keys consisting of certain other data elements, listed in the ''Categories of Records in the System.''

SAFEGUARDS:

(1) Records will be maintained in a private library not accessible by any unauthorized user; (2) authorized user identification codes will be tied to multiple password system to afford additional protection; (3) any attempt to bypass the password protection system will result in ''Log-Off'' from the system or denial of access to data if access to system is authorized; (4) physical access to system documentation, hardcopy printouts, personal data files, and terminals will be restricted to authorized personnel by maintaining a secure environment in the headquarters office; (5) access to data will be restricted to those who require it in the performance of their official duties and the individual who is the subject of the record (or authorized representative); and (6) tape files will be maintained in an environmentally secure vault area when not in use.

RETENTION AND DISPOSAL:

Records will be maintained for 2 years after they become inactive. All inactive records will be maintained on magnetic tape within the computer center and will be afforded the same safeguards as active records. Machine-resident records will be destroyed at the end of the 2-year period. Hard copy records will be retained until the records are replaced or become obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration (JM–1), Office of Inspector General, Department of Transportation, 400 7th Street, SW., Suite 9210, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as ''System Manager.''

RECORD ACCESS PROCEDURES:

Same as ''System Manager.'' Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1, (k)(2). The identity of an employee or other personal source who makes a complaint or provides information to the OIG via the OIG ''Hotline'' complaint center may be exempt from disclosure pursuant to Section 7(b) of the Inspector General Act of 1978 (Pub. L. 95–452).

CONTESTING RECORD PROCEDURES:

Same as ''Record Access Procedures.''

RECORD SOURCE CATEGORIES:

(1) Official personnel folder; (2) other personnel documents; (3) activity supervisors; (4) individual applications and forms; and (5) information obtained from interviews, review of records and other authorized investigative techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2).

Deletions

SYSTEM NUMBER:

DOT/OST 064

SYSTEM NAME:

Mobility Assignment Candidate File.

Dated: March 20, 1997.

Crystal M. Bush,

Privacy Act Coordinator, Department of Transportation.

[FR Doc. 97–7960 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD 97–020]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: The meeting of NOSAC will be held on Wednesday, May 14, 1997 from 8 a.m. to 4 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before April 30, 1997.

ADDRESSES: The NOSAC meeting will be held in the Rooms 3200–3204, of the NASSIF Building, 400 7th Street, SW, Washington, DC. Written material and requests to make oral presentations should be sent to Captain R.L. Skewes, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain R.L. Skewes, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone (202) 267–0214, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Introduction and swearing-in of new members.

(2) Progress report from the PTP Subcommittee.

(3) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units (MODUs), Liftboats and Vessels.

(4) Status report on revision of 33 CFR Subchapter ''N'', OCS Regulations.

(5) Status report on the implementation of 46 CFR Subchapter ''L'' on Offshore Supply Vessels (OSVs) and Liftboats.

(6) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(7) Status report from Safety Regulatory Reform Subcommittee.

(8) Report from subcommittee on Big ''L'' OSVs, Crew Boats, Alternate Tonnage and Licensing of OSVs.

Procedural

The meeting is open to the public. Due to new security procedures at government buildings, visitors should have a current picture ID to enter the NASSIF building. At the Chairperson's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations at the meeting should notify the Executive Director no later than April 30, 1997. Written material for distribution at the meeting should reach the Coast Guard no later than April 30, 1997. If a person submitting material would like a copy distributed to each member of the Committee or Subcommittee in advance of the meeting, that person should submit 25 copies to the Executive Director no later than April 23, 1997.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant to the Executive Director as soon as possible.

Dated: March 21, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–7915 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–14–M

[CGD 95–003]

Prevention Through People

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; change of location.

SUMMARY: On January 30, 1997, the Coast Guard published a **Federal Register** notice (62 FR 4567) that announced public meetings and a request for comment on the Coast Guard program Prevention Through People (PTP). This notice announces a site change for the fourth meeting from Providence to Newport, Rhode Island.

DATES: The meeting date is April 18, 1997, 12:30 p.m. to 4:30 p.m., Newport, RI.

ADDRESSES: The meeting location is the DoubleTree Hotel on Goat Island, Newport, RI, telephone 401–849–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Penn, Human Element and Ship Design Division (G-MSE–1), telephone 202-267–2997, fax 202–267–4816, email address is fldr-he@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: PTP is a systematic approach to safety which considers the people in the system, from the boardroom to the engineroom. PTP anticipates significantly improved safety in the operations of the marine transportation system by inclusively looking at the role and contributions of all the people involved, government, industry management, and workers. The public meeting is being held to discuss the PTP Strategic Plan. The Coast Guard would also like to solicit comments on PTP and associated issues as listed in the previous **Federal Register** notice (62 FR 4567).

Public Meeting

Attendance is open to the public. With advance notice, and as time permits, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify the person listed above under **FOR FURTHER INFORMATION CONTACT** no later than the day before the meeting. Written material may be submitted prior to, during, or after the meeting.

Information on Services for the Disabled

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: March 21, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–7916 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–14–P

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Fort Smith Regional Airport, Fort Smith, AR

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Fort Smith, AR, for Fort Smith Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable

requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Smith Regional Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 9, 1997.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is March 13, 1997. The public comment period ends May 12, 1997.

FOR FURTHER INFORMATION CONTACT: DOT/FAA, Attention: Mr. Tim Tandy, ASW–630D, Fort Worth, TX 76193–0630 at (817) 222–5635. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Fort Smith Regional Airport are in compliance with applicable requirements of Part 150, effective March 13, 1997. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 9, 1997. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

For Smith Regional Airport submitted to the FAA on February 14, 1997, noise exposure maps, descriptions and other documentation which were produced during development of the Part 150 Program Update from October 1994 to September 1996. It was requested that the FAA review this material as the noise exposure maps, as described in Section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility under Section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Fort Smith, AR. The specific maps under consideration are the 1995 Existing Conditions Noise Exposure Map (Figure 10.1) and the 2000 Future Conditions Noise Exposure Map (Figure 10.2) in the submittal. The FAA has determined that these maps for Fort Smith Regional Airport are in compliance with applicable requirements. This determination is effective on March 13, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Fort Smith Regional Airport also effective on March 13, 1997. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 9, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 2601 Meacham Boulevard, Arkansas/Louisiana ADO, 6th Floor, Fort Worth, TX 76137–4298;

Mr. Robert Johnson, Manager, Fort Smith Regional Airport, 5600 Airport Boulevard, Suite 200, Fort Smith, AR 72903.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, on March 13, 1997.

Naomi L. Saunders,

Manager, Airports Division, Southwest Region.

[FR Doc. 97–7938 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting will be held on April 15–17, 1997 beginning at 1:00 p.m. on April 15. Arrange for oral presentations by April 8, 1997.

ADDRESSES: The meeting will be held on the 12th Floor, Goddard Room of the Aerospace Industries Association of America, Inc. (AIA), 1250 Eye Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is given of an ARAC meeting to be held April 15–17, 1997 at the AIA, 1250 Eye Street, NW, Washington, DC 20005.

The agenda will include:

Tuesday, April 15, 1997 at 1:00 p.m.

- Opening Remarks.
- Review of Action Items.
- FAA Report.
- JAA Report.
- Transport Canada Report.
- Executive Committee Meeting Report.
- Harmonization Management Team Meeting Report.
- FAA Position on JAA Equivalence Proposal.
- Industry Position on JAA Equivalence Proposal.
- TAEIG Issues List and Tasking Chart Discussion.

Wednesday, April 15, 1997 at 8:30 a.m.

- Summarize previous day's discussion and begin working group reports.
- Jammed Flight Controls.
- Flight Test Harmonization Working Group (HWG) Report.
- Flight Test Guide Status Report.
- Engine HWG Report.
- Powerplant Installation HWG.
- Electromagnetic Effects HWG.
- Loads & Dynamics HWG Report and AC 25.629 Vote.
- General Structures HWG.
- Airworthiness Assurance WG Report.
- Braking Systems HWG.
- Systems Design and Analysis.

Thursday, April 17, 1997 at 8:30 a.m.

- FAA Policy for ICAO Rules Report.
- Policy/Guidance Memoranda Clarification.
- Open Agenda.
- Review Action Items.
- Review Future Meeting Schedule-Set Next Meeting.
- Process Check.

The ARAC will vote on the Loads and Dynamics Harmonization Working Group's proposed advisory circular (AC) to revise AC 25.629–1. Anyone interested in obtaining a copy of this document should contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by April 8, 1997 to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on March 24, 1997.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–7922 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 97–001–N01]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes a collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 27, 1997.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to the Docket Section, Room 5109, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, SW, Room 6123, Washington, DC 20590. Mr. Kosek's telephone number is (202) 366–2590. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

National Driver Register Reporting Requirement for 23 CFR Part 1327

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0001.

Form Number—This collection of information uses no standard form.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—The National Driver Register Act of 1982 (Public Law 97–364), as amended, mandates the Secretary of Transportation to establish and maintain a National Driver Register to assist chief driver licensing officials of participating states in exchanging information about the motor vehicle driving records of individuals. The Act requires the chief driver licensing official of each participating state to submit a report to the Secretary of each individual who is denied a motor vehicle operator's license by that State for cause; whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (a) Operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (b) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways; (c) failing to give aid or provide identification when involved in an accident resulting in death or personal injury; (d) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle. The Act also requires the chief driver licensing officials of participating states to check the NDR on all first time above-minimum age driver license applicants in their states.

The Commercial Motor Vehicle Safety Act of 1986 requires the states to check the NDR for all applicants for Commercial Drivers Licenses.

Description of the need for the information and proposed use of the information—The purpose of the NDR, and thus this information collection activity, is to prevent the issuance of driver's licenses to problem drivers in order to enhance traffic safety. Through amendments to the NDR Act, the activity also serves to prevent the certification of airline pilots, merchant mariners, locomotive operators, and individuals employed as motor vehicle operators if they are problem drivers.

The information will be used by NHTSA in exercising its statutory authority to operate the NDR. Without this information, states could issue licenses to individuals who are suspended or revoked in other states, or could issue a duplicate license to an individual who is licensed in another state allowing them to spread their violations over a number of licenses.

Description of Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—The 51 respondents are the State driver licensing agencies, including the District of Columbia. The frequency of response depends on how each state chooses to update the NDR master file. File updates can be daily or monthly.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The agency estimates the reporting burden for this year will be $39,540 for the 51 jurisdictions. The reporting burden is based on information systems personnel salaries and related expenses.

Authority: 49 U.S.C. 30304; delegation of authority at 49 CFR 1.50.

Dated: March 21, 1997.

James H. Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–7940 Filed 3–27–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33372]

Lake State Railway Company—Acquisition and Operation Exemption—Detroit & Mackinac Railway Company

Lake State Railway Company (LSR), a Class III railroad, has filed a notice of exemption to acquire and operate 275 miles of rail line between Kawkawlin and Gaylord, MI, and between Pinconning and Rogers City, MI, from the Detroit & Mackinac Railway Company (D&M), as follows: (1) The Pinconning Subdivision, from approximately milepost 5.0 to milepost 11; (2) the Mackinac Subdivision, from approximately milepost 116 to the end of the line at milepost 122; (3) the Huron Subdivision, from approximately milepost 16 to milepost 151.25, including the Pinconning crossover; (4) the Rogers City Branch from milepost 0.0 to milepost 11.0; and (5) the Hillman Branch and the Alabaster Branch.[1]

The transaction was to be consummated on or after the effective date of the exemption (7 days after the notice of exemption was filed), but no later than April 16, 1997.

LSR states that: (i) The acquisition will not place LSR in control of any connecting railroads; (ii) the acquisition is not part of a series of anticipated transactions that would place LSR in control of any connecting railroad; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33372, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Decided: March 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–7932 Filed 3–27–97; 8:45 am]

BILLING CODE 4915–00–P–M

[STB Finance Docket No. 33365]

R.J. Corman Railroad Company/Pennsylvania Lines Inc.—Corporate Family Transaction Exemption—Clearfield & Mahoning Railway Company

R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP) and the Clearfield & Mahoning Railway Company (C&M),[1] Class III common

[1] LSR currently leases and operates the rail lines that are the subject of this notice from D&M. *See Lake State Railway Company—Lease and Operation Exemption—Detroit and Mackinac Railway Company*, Finance Docket No. 32012 (ICC served Feb. 27, 1997).

[1] RJCP and C&M are commonly controlled by Richard J. Corman.

carrier railroads, have jointly filed a verified notice of exemption. C&M will agree to extend RJCP's current trackage rights from Curwensville, PA, milepost 18.0, to approximately East Bickford, PA, milepost 17.4, approximately 0.6 miles.[2] Simultaneously, RJCP and C&M will terminate a lease agreement over approximately 8.4 route miles of C&M rail line between milepost 25.8, at Clearfield, and milepost 17.4, at East Bickford.[3]

The transaction was to be consummated after the March 7, 1997 effective date of the exemption.

The new trackage rights agreement and the termination of the lease agreement between RJCP and C&M are transactions within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33365, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036.

Decided: March 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–7933 Filed 3–27–97; 8:45 am]

BILLING CODE 4915–00–P

[2] RJCP currently operates, by assignment, incidental trackage rights over C&M's lines between Clearfield, PA, milepost 25.8, and CB Junction, PA, milepost 19.4, to Curwensville, PA, milepost 18.0, a distance of 7.8 miles.

[3] *See R. J. Corman Railroad Company/ Pennsylvania Lines Inc.—Lease Exemption—Clearfield & Mahoning Railway Company,* STB Finance Docket No. 32861 (STB served June 21, 1996).

[STB Docket No. AB–33 (Sub–No. 101)]

Union Pacific Railroad Company—Abandonment—Plainville Branch (Plainville-Colby Line) in Rooks, Graham, Sheridan, and Thomas Counties, KS; Notice of Findings

The Board has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its line of railroad known as the Plainville-Colby Line between milepost 102.0 near Plainville and milepost 201.0 near Colby, a distance of 99.0 miles, in Rooks, Graham, Sheridan and Thomas Counties, KS.

The abandonment authorization will be effective April 28, 1997, unless within 15 days after this publication, the Board also finds that one or more financially responsible persons (including a governmental authority) have offered financial assistance (through subsidy or purchase) to enable the rail service to be continued.

Any financial assistance offer must be filed with the Board and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in boldface on the lower left-hand corner of the envelope containing the offer: ''Office of Proceedings, ABOFA.'' Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10904, 49 CFR 1002.2(f)(25), and 49 CFR 1152.27.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

Decided: March 21, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–7931 Filed 3–27–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC) at the request of the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 20 representatives from various segments of the private sector payer community. Nine of these appointments to IRPAC will expire at the end of 1997. Additional members will be selected for two-year terms beginning in January 1998. National business, technical, and professional associations are encouraged to submit multiple nominees.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for ensuring and facilitating compliance by payers with information reporting requirements. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend two two-day public meetings each year. IRPAC members are expected to attend and pay their own way to between four and six working sessions each year, which are generally held in Washington, DC; New York, NY; or Martinsburg, WV.

The IRS is interested in representation from different areas of the payer community (e.g., life insurance, employee plans, securities, mutual funds, banking, payroll, etc.). Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following

application questionnaire (or a facsimile thereof prepared on a word processor), and forward it to Ms. Kate LaBuda of the Office Payer Compliance, at the address below.

ADDRESSES: Internal Revenue Service, CP:EX:ST:PC, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

DATES: Completed questionnaires (or facsimiles) should be received by IRS no later than Friday, May 16, 1997. Questionnaires received after this date will not be considered. An acknowledgment letter will be sent upon receipt.

FOR FURTHER INFORMATION CONTACT: To have a copy of the application questionnaire mailed or faxed to you, please call Ms. Thomasine Matthews at 202–622–4214 (not a toll-free number). For general information about the application process or IRPAC in general, call Kate LaBuda at 202–622–3404 (not a toll-free number).

Dated: March 24, 1997.

Approved:

Kate LaBuda,

Acting Director, Office of Payer Compliance.

Attachment

Information Reporting Program Advisory Committee Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications (or facsimiles produced on a word processor) must be received at the address listed below by May 16, 1997. Those received after this date will not be considered. All applications received will be acknowledged. Questions may be directed to Kate LaBuda at 202–622–3404.

Ms. Kate LaBuda, CP:EX:ST:PC, Internal Revenue Service, Room 2013, 1111 Constitution Avenue, NW., Washington, DC 20224

1. Name:
2. Title:
3. Employer Name:
4. Business Address:
5. Business Phone:
6. Fax Number:
7. E-Mail Address:
8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf. This letter should contain the name of a contact and this contact's phone number.
9. Home Address:
10. Home Phone:
11. Have you ever served on IRPAC or the Commissioner's Advisory Group (CAG)? If so, please explain. Do you currently have an application pending for CAG membership?
12. Check the *one* segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

____Real Estate
____Transmitter/Forms Developer
____Software Developer
____Insurance: Property & Casualty
____Insurance: Life
____Securities
____Mutual Funds
____Payroll
____State & Local Government
____Corporate Compliance
____Small Business Compliance
____Public Accounting
____Employee Plans
____Trust Company
____Corporate Transfer Agent/Utilities
____Large Banks/Financial Institution
____Small Banks/Financial Institution
____Restaurant Industry
____Other
(Please specify. _____)

13. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Account for all years of IRP experience claimed.)
14. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)
15. Identify organizations to which you belong and any relevant leadership positions you have held.
16. List any previous IRS employment (please state position(s), title(s), and time in each position):
17. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (three sentences) of each topic.

The Following Three Items Are Required for an FBI Name Check

18. Date of Birth:
19. Place of Birth:
20. Other names ever used:

The Following Items Are Required for an IRS Tax Check. (Please Note That a Tax Check is not a Tax Audit.)

The Internal Revenue Service will perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and provide the information obtained to the Assistant Secretary (Administration) of the Treasury Department. The purpose of this tax check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. Your Social Security Number is required to identify your tax records accurately. This tax check must be completed prior to any appointment to this Federal Advisory Committee and you are now being asked to voluntarily provide the following information and, at a later time, you will be asked to sign a formal tax check waiver:

21. Social Security Number (SSN):
22. Spouse's name and SSN (if married and filing jointly):

The Following Item is Required Because of the Foreign Agents Registration Act (FARA), as Amended

23. I presently ____ am/ ____ am not required to register as an agent of a foreign principal under FARA, as amended.

Note: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

CERTIFICATION

24. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

_____
Signature

_____
Date

[FR Doc. 97–7966 Filed 3–27–97; 8:45 am]

BILLING CODE 4830–01–U

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Instructions for Filling out the Interest-Rate Risk Appeals Submission.

DATES: Written comments should be received on or before May 27, 1997 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0084. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert Kazden, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5759.

SUPPLEMENTARY INFORMATION:

Title: Instructions for Filling Out the Interest-Rate Risk Appeals Submission.

Form Number: OTS Form 1586–A and OTS Form 1586–I.

Abstract: These forms are used by OTS to obtain information from savings associations which want to appeal their interest-rate risk component.

Current Actions: This is an extension of an already approved information collection.

Type of Review: Regular Submission.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 9.

Estimated Time Per Respondent: 18.89 minutes average.

Estimated Total Annual Burden Hours: 170 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 19, 1997.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–7866 Filed 3–27–97; 8:45 am]

BILLING CODE 6720–01–P

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision, Department of Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the Office of Thrift Supervision within the Department of the Treasury is soliciting comments concerning the Electronic Loan Data Request Survey.

DATES: Written comments should be received on or before May 27, 1997 to be assured of consideration.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0084. These submissions may be hand delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robyn Dennis, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5751.

SUPPLEMENTARY INFORMATION:

Title: Electronic Loan Data Request Survey.

Form Number: OTS Form 1630.

Abstract: OTS is changing a portion of its examination process. Thrift institutions are being asked to provide loan information to OTS examiners electronically. This survey will allow OTS to determine whether the new system reduces the burden of the on-site examination process by providing information on the cost, ease, and amount of time required to prepare the loan information electronically, in comparison with the previous paper-based system.

Current Actions: New Collection.

Type of Review: Regular Submission.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: .25 hours.

Estimated Total Annual Burden Hours: 125 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 21, 1997.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–7867 Filed 3–27–97; 8:45 am]

BILLING CODE 6720–01–P

Submission for OMB Review; Comment Request

March 21, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dates: Written comments should be received on or before April 28, 1997 to be assured of consideration.

OMB Number: 1550–0016.

Form Number: OTS Form 1588.

Type of Review: Extension of a currently approved collection.

Title: Merger Applications.

Description: The Bank Merger Act and the OTS merger regulations implementing that act require a savings association that proposes to combine with either another savings association or insure depository institution to obtain written approval from the OTS.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Respondent: 40 hours.

Frequency of Response: Once per application.

Estimated Total Reporting Burden: 1,600 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–7868 Filed 3–27–97; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 62, No. 60

Friday, March 28, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

Correction

In notice document 97–6147, beginning on page 11477, in the issue of Wednesday, March 12, 1997, make the following correction:

On page 11477, in the third column, in the **DATES:** entry, in the fourth line, ''April 11, 1997'' should read ''May 12, 1997''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38243; File No. SR-Amex 97-02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Amendments to Rules 103 and 950 Regarding Intra-day Trading

February 5, 1997.

Correction

In notice document 97–3428 beginning on page 6590 in the issue of Wednesday, February 12, 1997 make the following correction:

On page 6591, in the second column, beginning in the 15th line, ''[insert date 21 days from date of publication]'' should read ''March 5, 1997''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38123; File No. SR-Amex-96-45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to the Closing Time for Equity Options and Narrow-Based Index Options

January 6, 1997.

Correction

In notice document 97–688 beginning on page 1786 in the issue of Monday, January 13, 1997 make the following correction:

On page 1788, in the first column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38101; File No. SR–NASD–96–58]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board ® Service through March 31, 1997

December 31, 1996.

Correction

In notice document 97–238 beginning on page 1010 in the issue of Tuesday, January 7, 1997,the date ''December 31, 1996'' should be added as set forth above.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38115; File No. SR-NASD-95-54]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to a Modification of the Operation of the Small Order Execution System During Locked and Crossed Markets

January 3, 1997.

Correction

In notice document 97–445 beginning on page 1351 in the issue of Thursday, January 9, 1997 make the following correction:

On page 1353, in the second column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38133; File No. SR-NASD 96-57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SEC Transaction Fees

January 10, 1997.

Correction

In notice document 97–861 beginning on page 1940 in the issue of Tuesday, January 14, 1997 make the following correction:

On page 1942, in the third column, above the FR Doc. line, the signature was omitted and should read as set forth below.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38149; File No. SR–NASD–97–01]

Self-Regulatory Organizations; Notice of Proposed Rule Changes by the National Association of Securities Dealers, Inc. Relating to SelectNet Orders

January 10, 1997.

Correction

In notice document 97–986 beginning on page 1942 in the issue of Tuesday, January 14, 1997 make the following correction:

On page 6591, in the second column, beginning the 15th line, ''[insert date 21 days from date of publication]'' should read ''February 4, 1997''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38241; File No. SR-PSE-96-36]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to a Requirement That all Non-Self-Clearing PSE Floor Brokers Maintain Error Accounts

February 5, 1997.

Correction

In notice document 97–3429 beginning on page 6594 in the issue of Wednesday, February 12, 1997 make the following correction:

On page 6595, in the third column, beginning the sixth line, ''[insert date 21 days from date of publication]'' should read ''March 5, 1997''.

BILLING CODE 1505-01-D

federal register

Friday
March 28, 1997

Part II

Environmental Protection Agency

40 CFR Parts 136 and 141

Guidelines Establishing Test Procedures for Analysis of Pollutants and National Primary Drinking Water Regulations; Flexibility in Existing Test Procedures and Streamlined Proposal of New Test Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 136 and 141

[FRL–5800–2]

RIN 2040–AC93

Guidelines Establishing Test Procedures for the Analysis of Pollutants and National Primary Drinking Water Regulations; Flexibility in Existing Test Procedures and Streamlined Proposal of New Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to streamline the process for EPA approval of analytical methods (and modifications thereof) under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). The current methods approval process applies to and is used by public and private laboratories, manufacturers of analytical equipment and analysts who modify analytical methods or who develop new methods for use in compliance monitoring under the CWA and SDWA. The proposed rule only affects states if they choose to adopt the proposed streamlined process as part of their laboratory auditing programs. Under the streamlined methods approval system, EPA would increase the analyst's flexibility to modify existing test procedures, expedite approval of new and modified test procedures, establish and require the use of standardized quality control (QC) and QC acceptance criteria in existing and new test procedures, and recommend use of standard data elements for reporting test results. Today's action responds to the Administration's Environmental Technology and Reinventing Government Initiatives and the National Technology Transfer and Advancement Act by promoting use of emerging technologies and encouraging participation of consensus standards organizations and other organizations in developing test procedures (analytical methods). The action proposed in today's rule would increase the options available to the regulated community in complying with EPA regulations under the CWA and SDWA. These actions are only an initial and interim step in the Agency's pursuit of a performance-based approach to environmental measurements, and are not meant to define or limit the Agency's ultimate implementation of a ''pure'' performance-based measurement system. The increased flexibility provided by this proposed action should significantly reduce the need for Agency review of alternate test procedures and make it easier for the analyst to select analytical methods that are most suited to specific regulatory measurement needs.

DATES: Comments on this proposed rule will be accepted until June 26, 1997.

ADDRESSES: Send written comments to the Streamlining Methods Docket Clerk, Water Docket (MC–4101), USEPA, 401 M Street, SW., Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the proposed regulation or in the supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) or electronic mail (email) will be accepted because EPA cannot ensure that they will be submitted to the Water Docket. A copy of the supporting documents cited in this proposal are available for review at EPA's Water Docket, 401 M Street, SW., Washington, DC 20460. For access to docket materials, call 202/260–3027 between 9:00 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Reding, USEPA, Office of Ground Water and Drinking Water (MS–140), 26 W. Martin Luther King Drive, Cincinnati, OH 45268, 513/569–7961.

SUPPLEMENTARY INFORMATION: The supporting documents that are a part of the administrative record for this proposal may be obtained from the National Center for Environmental Publications and Information (NCEPI) (513/489–8190), from the National Technical Information Service (NTIS) (703/487–4650), from the Educational Resources Information Center (ERIC) (800/276–0462), and via the Internet on the EPA Office of Water home page at http://www.epa.gov/watrhome. These documents are titled, Guide to Method Flexibility and Approval of EPA Water Methods, December 1996 Draft, EPA–821–D–96–004, NTIS PB97–117766, ERIC D–A43 or D–A46 (diskette) (Streamlining Guide, EPA 1996a), Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater, December 1996, EPA–821–B–96–005, NTIS PB97–125298, ERIC D–A44 or D–A47 (diskette) (Organic Methods, EPA 1996b), and Guidelines and Format for Methods to Be Proposed at 40 CFR Part 136 or Part 141, July 1996, EPA–821–B–96–003, NTIS PB96–210448, ERIC D–A42 or D–A45 (diskette) (Method Guidelines and Format, EPA 1996c).

Regulated Entities

Entities potentially regulated by this action are those who seek EPA approval of analytical technologies for monitoring under the provisions of the CWA and SDWA. Entities potentially regulated by this action are listed in the table below. These entities potentially include consensus methods organizations that publish compendiums of analytical methods for water, and equipment manufacturers, instrument manufacturers and laboratories that modify compliance methods or seek approval of new methods for compliance monitoring.

Category	Examples of regulated entities
Public	Government laboratories that develop analytical methods for compliance with the CWA and the SDWA.
Private	Commercial laboratories, consensus methods organizations, instrument manufacturers, vendors, and other entities that develop or publish analytical methods for compliance with the CWA and the SDWA.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is likely to be regulated by this action, you should carefully read the applicability language of today's rule at §§ 136.4, 136.5 and 141.27. If you have questions regarding the applicability of this action to a particular entity, consult the individual listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Authority

A. Clean Water Act

The Clean Water Act (CWA) requires the U.S. Environmental Protection Agency (EPA) Administrator to promulgate effluent limitations guidelines for specified categories and classes of point sources. Section 301 of CWA prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit issued under CWA section 402. Section 307 requires the EPA Administrator to publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (POTWs). Section 401 requires State and Tribal certification of a federal license that may result in any discharge into the navigable waters.

Section 304(h) of CWA requires the EPA Administrator to promulgate guidelines establishing test procedures for data gathering and for monitoring compliance with published guidelines. EPA's promulgation of analytical methods is authorized under this section of CWA, as well as the general rulemaking authority in CWA section 501(a). The section 304(h) test procedures (analytical methods) are published or incorporated by reference at 40 CFR part 136. They include Methods for Chemical Analysis of Water and Wastes (MCAWW); the EPA 200-, 600-, and 1600-series methods; methods published by consensus standards organizations such as ASTM, AOAC-International, and Standard Methods for the Examination of Water and Wastewater (Standard Methods) published jointly by the American Public Health Association (APHA), the American Water Works Association (AWWA), and the Water Environment Federation (WEF); methods used by the U.S. Geological Survey; methods developed by third parties; and other methods referenced in CWA regulations. These methods support development of effluent limitations guidelines and standards promulgated at 40 CFR parts 405–503, establish compliance with NPDES permits issued under CWA section 402, allow implementation of the pretreatment standards issued under CWA section 307, and apply to the certification of compliance with State water quality standards under CWA section 401.

B. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) requires the EPA Administrator to promulgate national primary drinking water regulations (NPDWRs) that specify maximum contaminant levels (MCLs) or treatment techniques for listed drinking water contaminants (section 1412). Section 1445(a) authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons comply with the requirements of SDWA. EPA's promulgation of analytical methods is authorized under these sections of SDWA, as well as the general rulemaking authority in SDWA section 1450(a).

SDWA section 1401(1)(D) specifies that NPDWRs contain criteria and procedures to ensure a supply of drinking water that dependably complies with MCLs, including quality control (QC) and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of drinking water supply and distribution systems. These test procedures are promulgated at 40 CFR part 141 and include three MCAWW methods, the 200-, 300-, and 500-series EPA methods, methods published by consensus standards organizations, and other methods referenced in SDWA regulations. EPA uses these test procedures to establish MCLs under SDWA section 1412 and to establish monitoring requirements under SDWA section 1445(a).

II. Background and History

A. Introduction

Within EPA, the Office of Water (OW) publishes analytical methods for use in data gathering and environmental monitoring under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). These methods have been developed by EPA, by consensus standards organizations, and by others. Many of these methods, especially those published before 1988, are prescriptive, with limited flexibility to change technologies to respond to specific situations or to incorporate advances in measurement technology. There has been a growing awareness, both within EPA and in the analytical community, that the requirement to use prescriptive measurement methods to comply with Agency regulations has imposed an unintended regulatory burden and potentially created a barrier to innovation in environmental monitoring.

To reduce this regulatory burden and to lower the barriers to innovation, the Agency in a future rulemaking may propose to adopt a completely performance-based approach to environmental measurements. As envisioned under such an approach, the Agency would specify the question(s) to be answered by the measurement, the decision(s) to be supported by the data, and the level of uncertainty that is acceptable. EPA would specify performance criteria for the measurement and data producers would be required to demonstrate that their proposed measurement system (i.e., methods, sample handling procedures) meets these specific performance criteria. Data producers would be required to document performance and certify that they have used appropriate quality assurance and QC procedures. The system would apply to physical, chemical, and biological measurements

conducted either in laboratories or in the field (EPA 1996d).

In a series of steps designed to adopt the performance-based approach, each program office in the Agency has developed (or will develop) an implementation plan that describes how the performance-based approach would be put into practice. The Agency's goal is to have these implementation plans as consistent as possible (i.e., ''harmonized'') from program to program (EPA 1996e). The streamlining initiative proposed in today's notice describes how EPA's Office of Water is taking immediate steps to remove some of the regulatory barriers to the use of new technologies for environmental measurements of chemical analytes under the CWA and SDWA. This initiative would use reference chemical methods that contain performance criteria and methods that are already approved at 40 CFR parts 136 and 141. Other implementation approaches to a performance-based measurement system, such as listing in the CFR only the required performance criteria for the measurement, are also possible; these approaches, which are not the subject of today's proposal, may be the subject of future rulemakings.

Today's rule proposes a process that would use standardized QC, QC acceptance criteria, and method validation procedures for stakeholders to gain approval of new and modified methods for compliance monitoring under the SDWA and CWA. Today's rule also proposes to designate certain approved drinking water and wastewater methods as reference methods. The approved reference methods either presently contain QC acceptance criteria, are supplemented with these criteria in today's proposal, or would be supplemented with these criteria in a future rulemaking. In subsequent rulemakings, EPA intends to extend the streamlined method approval process to physical and biological (including microbiological) measurements in the water programs.

Through public meetings, announcements, and technical presentations, EPA's Office of Water has coordinated this streamlining initiative with various EPA Headquarters offices, EPA Regions, the States, other governmental agencies, industry, consensus standards organizations, environmental laboratories, and other interested parties. With today's proposal, EPA attempts to define a comprehensive program to increase analytical choices in selection of compliance monitoring methods and to streamline the procedures for approval of water methods. In this initiative, EPA seeks to promote rapid introduction of innovative technologies, to encourage non-EPA organizations to participate in the method development and approval process, and to implement procedures to expedite the review and approval of new and modified methods. Most importantly, EPA believes that this initiative also offers the opportunity to improve the quality of environmental monitoring.

The proposed streamlined procedures for approval of water methods would allow analysts to use professional judgement to modify and develop alternatives to established Agency methods and to take advantage of emerging technologies that reduce costs, overcome analytical difficulties, and enhance data quality. The proposal to increase the flexibility to modify reference methods would be governed by QC acceptance criteria designed to ensure that the quality of the environmental data would not be compromised. These criteria would be used to demonstrate that a modified method produces results equal or superior to results produced by the reference method. EPA also proposes to require that all new methods contain such QC acceptance criteria so that modifications could be made to new methods.

EPA believes that allowing reference method modifications and providing rapid approval of new methods would yield several benefits. On behalf of regulated entities, analysts could select the analytical method that yields the best performance in a specific situation. The QC acceptance criteria in the reference method would enable the analyst to document equivalent or superior performance to the satisfaction of reviewing authorities. New technologies could be utilized to overcome matrix interference problems, lower detection limits, improve laboratory productivity, or reduce the amount of hazardous materials used and hazardous wastes produced in the laboratory.

A more flexible method approval program is consistent with the Administration's Environmental Technology and Reinventing Government initiatives and the National Technology Transfer and Advancement Act of 1995 (NTTAA). The proposed program would empower stakeholders while decreasing demands on Agency resources and is intended to accelerate environmental technological innovation while enhancing and maintaining environmental protection. EPA believes that the incentives provided by a more flexible water test methods approval program would spur the development of new technologies and, with them, new jobs. EPA also anticipates that the use of new technologies may lower the cost of environmental measurements, thereby reducing costs of environmental compliance for American industries and municipalities.

B. Current Office of Water Methods Approval Programs

Requirements for approval of alternate analytical techniques (methods) are specified at 40 CFR 136.4 and 136.5 for wastewater and at 40 CFR 141.27 for drinking water methods. These requirements are the basis for the Agency's alternative test procedures (ATP) program for water methods. Under the ATP program, persons may request approval to modify steps in a reference method or approval to use a new method. The person that submits the ATP application is responsible for validating the new or modified method. Agency staff review the ATP validation package and, if required, successful applications undergo formal rulemaking. Rulemaking is required when a new or revised method is to be added to the list of approved methods in the CFR. The ATP and rulemaking processes make heavy demands on stakeholder, contractor, EPA, and Office of Federal Register resources. The process can require one to two years to gain approval of a method. Because advances in analytical technology continue to outpace the capacity of OW's methods approval program, the program is slow to respond to emerging technologies and has been under-utilized. Under the streamlining initiative described below, EPA proposes to increase method flexibility by amending the procedures at 40 CFR 136.4, 136.5 and 141.27 to specify a more rapid and less resource intensive process for approval of new technologies.

C. Streamlining Initiative

The proposed streamlining initiative is designed to improve overall resource use while making the method development process more efficient and accessible to non-EPA organizations. The goals of the initiative are to decrease the need for developers of modified methods to use the ATP program and to speed up the approval (or disapproval) of methods subject to ATP review. EPA believes the streamlining initiative would (1) encourage the use of emerging technologies by increasing the flexibility to modify approved methods without formal EPA approval, (2) provide a mechanism for non-EPA organizations to develop and submit new methods for

approval, and (3) expedite the approval of new and modified methods by improving the current ATP program. This initiative applies to approval of wastewater and drinking water methods. Because of current emphases on decreasing redundant activities, forming partnerships with stakeholders, and more quickly adopting advances in technology, EPA believes this is an appropriate time to look to organizations outside of EPA for assistance in developing new methods that take advantage of emerging technologies that reduce costs, overcome analytical difficulties, and enhance data quality. Once the streamlining initiative is in place, EPA expects to increase its reliance on outside organizations as the developers of many new methods. EPA would focus its method development activities on specialized or esoteric methods needed to support regulation development or compliance monitoring.

OW has coordinated the development of the streamlining initiative with various governmental entities, industry, consensus standards organizations, environmental laboratories, and other interested parties. These organizations include the National Environmental Laboratory Accreditation Committee (NELAC), and the Interagency Steering Committee for Quality Assurance for Environmental Measurements, which includes representatives from the Department of Energy, Department of Defense, EPA, Air Force, U.S. Army Corps of Engineers, U.S. Geological Survey (USGS), Bureau of Reclamation, and other organizations.

D. Streamlining Objectives

The purpose of the streamlining initiative is to implement a more performance-based approach to environmental measurements under the SDWA and CWA. The proposed streamlined methods approval procedures would revolutionize the water methods approval program to expand the flexibility to modify existing methods, provide a mechanism for non-EPA organizations to gain approval of new methods, and expedite the approval of new and modified methods. EPA has defined several specific streamlining objectives:

- Increase the current flexibility to modify approved chemical test procedures (methods) without formal EPA approval; this would allow laboratories to overcome matrix interferences and would facilitate early introduction of innovative technologies.
- Designate a reference method for each unique combination of analyte and determinative technique and establish standardized QC tests for approved methods to ensure data quality.
- Develop and publish QC acceptance criteria for any reference method that does not have these criteria so that laboratories can demonstrate equivalent or superior performance of a modified method.
- Provide a standard method format and mechanism for validation and approval of new methods to expedite method approval and to increase confidence in the validity of the methods and resulting data.
- Encourage stakeholder participation in method development to keep pace with emerging technologies.
- Harmonize the wastewater and drinking water test procedures to eliminate unnecessary inconsistencies.
- Increase standardized data reporting by recommending use of standard data elements for reporting analytical results for environmental and QC samples.
- Identify and propose withdrawal of outdated or obsolete methods from 40 CFR parts 136 and 141 to modernize approved test methods and to eliminate methods that are no longer published by the issuing government agency, consensus methods organization, or vendor.
- Work with the Office of Federal Register to incorporate more methods by reference to reduce the volume of material published in the CFR while ensuring and improving access to those methods by all interested parties.

E. Public Meetings and Stakeholder Participation in Streamlining Development

EPA conducted four public meetings to develop a streamlined water test methods approval program. EPA held the meetings in Seattle, Washington, on September 28, 1995; in Boston, Massachusetts, on January 25, 1996; in Chicago, Illinois, on February 14, 1996; and in Denver, Colorado, on July 24, 1996. The purpose of the meetings was to present and discuss EPA's draft of the streamlining initiative and obtain stakeholder advice for refining the streamlining approach prior to proposal.

All meetings were announced in the **Federal Register** in advance. The first meeting, held in Seattle, was announced on September 12, 1995, in a **Federal Register** notice titled, ''A Public Meeting and Availability of Documents on Streamlining Approval of Analytical Methods at 40 CFR part 136 and Flexibility in Existing Test Methods'' (60 FR 47325). This **Federal Register** notice provided supplementary information regarding the streamlining effort and made available several supporting documents. Subsequent public meetings in Boston and Chicago were announced on December 18, 1995 (60 FR 65207), and the fourth public meeting in Denver was announced on July 10, 1996 (61 FR 36328). The supporting documents and summaries of the four public meetings are in the rule docket.

In addition to the public meetings, EPA solicited support and expertise from each of the consensus standards organizations and government agencies that developed the methods already approved for use under the wastewater and drinking water programs. These groups include the American Public Health Association (APHA), American Water Works Association (AWWA), and Water Environment Federation (WEF) as publishers of Standard Methods for the Examination of Water and Wastewater (Standard Methods); ASTM (formerly, American Society for Testing and Materials); AOAC-International (formerly, the Association of Official Analytical Chemists); and the USGS. EPA also provided the opportunity for individuals, the regulated industry, the States, local permitting authorities, vendors, laboratories, and laboratory organizations such as the International Association of Environmental Testing Laboratories (IAETL), to voice opinions at the meetings. The groups offered valuable insight concerning problems with the current program and recommended areas of improvement.

Through the public meeting process and through individual meetings with key stakeholder organizations, EPA received input from more than 400 stakeholders, including all major stakeholder organizations.

Following the first three public meetings, EPA compiled and reviewed preliminary stakeholder advice to assess the initial response to streamlining and revise the approach accordingly. In response to stakeholder suggestions, EPA made the following changes to the streamlining initiative:

- Included drinking water methods (40 CFR part 141);
- Expanded flexibility to allow changes to the determinative technique;
- Qualified flexibility to clarify that flexibility in front-end techniques does not apply to sample collection and preservation;
- Expanded Tier 1 validation to allow single-laboratory application of a method modification to multiple matrix types;
- Added an option to have EPA review Tier 2 and Tier 3 method modifications upon request;
- Added an option to have EPA formally approve, upon request, Tier 2 and Tier 3 method modifications through rulemaking; and
- Added an option to submit screening methods to EPA for approval.

The Streamlining Guide (EPA 1996a) and Method Guidelines and Format (EPA 1996c) served as the revised draft of the streamlining initiative that was discussed at the final public meeting on streamlining held in Denver. This

proposed rule incorporates suggestions received at the Denver public meeting, at previous public meetings, by mail, by electronic mail, and in informal discussions with and among EPA personnel, EPA contractors, and stakeholders.

Based upon the extensive involvement of internal and external parties, and the generally favorable response, EPA anticipates that the proposed regulations will be well received by regulatory authorities, the regulated community, the technology development community, and the laboratory service community.

F. Preamble Structure

Section III of this preamble outlines the key elements of streamlining. Section III.A describes EPA's proposal for increased flexibility within the method approval program and increased flexibility for modifications to existing methods. Section III.B describes the standardized QC requirements and QC acceptance criteria associated with implementation of flexibility. Section III.C describes the requirements for validating new methods and method modifications, using a system based on the intended application of the method or modification. Section III.D describes the expedited method approval process and includes procedures for submitting validated methods to EPA for approval. Section III.E describes other issues associated with the streamlining initiative. The descriptions in Section III delineate the framework of EPA's method flexibility and methods approval streamlining initiative. The Streamlining Guide (EPA 1996a) and other supporting documents cited in this notice contain specifics about the start-up and operation of the proposed streamlining initiative.

III. Summary of Proposed Rule

A. Method Flexibility

In developing plans to improve the method approval program for drinking water and wastewater methods, EPA concluded that the program's success would depend largely on its ability to reflect the latest advances in technology. This required, in turn, that the program be efficient and flexible enough to encourage the development and use of new measurement techniques. To meet these objectives, EPA determined that the improved program would have two types of flexibility:

(1) Flexibility to modify reference methods without seeking formal approval through the regulatory process, and

(2) Flexibility to develop and submit for approval entirely new methods.

The first type of flexibility is primarily an expansion of the flexibility already provided in some approved water methods. Under the streamlining program, it would no longer be necessary to apply for ATP approval of a method modification, because an analyst would only need to demonstrate and document that the modified method produces results equal or superior to results produced by an EPA-designated reference method. A designated reference method that contains QC acceptance criteria against which performance of a method modification could be measured would be the primary control to ensure data quality. Other controls would include specific multi-laboratory and multi-matrix requirements for validating modified methods and checklists for documenting equivalency.

The second type of flexibility would expand the ATP concept by providing a mechanism whereby entirely new techniques would be submitted to the Agency for approval, even when these techniques would not serve as alternates to currently approved methods.

In designing a framework through which this flexibility could be implemented, EPA sought to balance the advantages of increased flexibility against the concern that results produced by modifications would be inferior to results produced by approved methods. To ensure that these competing objectives could be met, EPA has devised a framework that is based on:

(1) Use of a standardized QC program with elements that could be applied to all new and existing methods, and that is stringent enough to meet compliance monitoring objectives, extensive enough to be applied to a wide variety of analytical procedures, and yet simple enough to avoid unwieldy or unnecessary restrictions;

(2) Development and application of QC acceptance criteria for each QC element against which method modifications could be assessed and documented; and

(3) Designation of a single reference method for each unique combination of analyte and determinative technique. This reference method would contain the QC acceptance criteria used to assess each QC element for method equivalency.

In today's proposed revisions to 40 CFR parts 136 and 141, EPA would define the QC elements and associated acceptance criteria (e.g., calibration, sensitivity, accuracy, precision) necessary to demonstrate the equivalency of a modified method to a reference method. These proposed QC requirements are based on the three components outlined above. Once equivalency was demonstrated, a modified method could be used immediately without review by EPA because EPA would have ''preapproved'' the modified method.

EPA believes that incorporating method flexibility into approved analytical methods would improve laboratory operations by allowing analysts to rely on professional judgement to ascertain the procedures and protocols necessary to obtain the best results. Analysts could employ new technologies to overcome matrix interferences, lower detection limits, improve the reliability of results, reduce the generation of hazardous wastes, improve laboratory productivity, and reduce analytical costs.

1. Reference Method

The foundation of the flexibility concept is the use of a reference method. For each unique combination of analyte and determinative technique, EPA has identified or would designate one approved method as the reference method. If the performance of the modified method is equal or superior to the performance of the reference method, the method modification would be allowed. EPA believes that the use of a reference method with defined QC acceptance criteria as the performance measure provides a means for implementing the streamlining initiative. This approach would clarify and reduce the effort required to demonstrate the equivalency of method modifications.

To implement the streamlining initiative, all reference methods would need to specify standardized QC and QC acceptance criteria. The QC and QC acceptance criteria would be necessary to demonstrate method equivalency. Some methods, such as those approved at 40 CFR part 136, Appendix A, already contain the necessary standardized QC and QC acceptance criteria. Some other methods do not specifically identify acceptance criteria for all of the standardized QC elements, but EPA has the data from which such criteria could be developed. For this proposed rule, selection of reference methods was based either on the existence of QC acceptance criteria in the method or the availability of data from which QC acceptance criteria could be developed. EPA is proposing QC acceptance criteria for some inorganic analytes and reference methods. These criteria are specified at 40 CFR 136.3 Table IF and at 141.27(d) in the proposed rule text.

The remaining criteria for other analytes and reference methods would be developed and proposed in subsequent rulemaking(s).

For some determinative techniques, no currently approved method contained either all of the QC acceptance criteria proposed in today's rule (e.g., Table ID in 40 CFR part 136) or sufficient data from which to develop such criteria. In these cases, no reference method has been proposed; therefore, all of those methods would be classified as other approved methods. Without a reference method, users would not be able to implement the method flexibility proposed in this streamlining initiative.

EPA plans to include standardized QC with QC acceptance criteria in all water methods under development and for all future water methods. However, for drinking water methods, some of the QC acceptance criteria (e.g., laboratory certification criteria) are currently (and may continue to be) specified in drinking water regulations because these criteria are an integral part of EPA's compliance monitoring requirements.

In the future, the selection of a new reference method would depend upon requirements imposed by the submitting organization, the availability of standardized QC and QC acceptance criteria in the method, and the timing of the selection. EPA intends to rely on outside organizations to develop the majority of the new methods. Therefore, it is anticipated that new reference methods for a particular determinative technique would be designated by being the first method approved for the given combination of analyte and determinative technique. To become a reference method, the new method would need to contain standardized QC and QC acceptance criteria, and be approved through an Agency rulemaking.

The purpose of specifying a single reference method for a specific combination of analyte and determinative technique is to avoid the possible confusion that could be created if two or more reference methods contained differing QC acceptance criteria. The QC acceptance criteria associated with the single reference method would be the sole criteria against which a method modification would be tested.

In today's action, EPA proposes to retain all methods approved for use at 40 CFR parts 136 or 141, but would re-categorize each of these methods as either a ''reference method'' or an ''other approved method.'' Both types of methods would carry equal regulatory status. The difference between the methods would be that the reference method would contain (or would be supplemented with) detailed QC acceptance criteria that would need to be used to assess the equivalency of a method modification.

2. Method Modifications

Currently, explicit flexibility to modify a method is provided in some of the approved 200-, 300-, 500-, 600-, and 1600-series methods published by EPA. The allowed flexibility is typically specified through use of the term ''should'' or the words ''or equivalent.'' Substitution of a 500-mL beaker for a 250-mL beaker or use of an ''equivalent'' chromatographic column are examples of such explicit flexibility. The EPA 600- and 1600-series wastewater methods approved at 40 CFR part 136, Appendix A, also provide limited flexibility to improve separations and reduce the cost of measurements as long as method performance is not sacrificed. As specified in those methods, analysts who choose to exercise explicit flexibility are required to meet the QC acceptance criteria of the approved method and to maintain a record of the performance of the modified method for review at the request of an auditor. In the development of more recent methods (e.g., Method 1664 and Method 1613), EPA expanded its definition of ''allowed flexibility'' to further encourage use of new techniques that provide equal or better performance at lower costs. However, no approved methods provide unlimited flexibility and few provide the extensive flexibility that EPA proposes in this initiative.

The categories of method modifications considered in this proposal are: (1) Sample collection and holding procedures, (2) front-end techniques, (3) determinative techniques, and (4) analyte addition. These categories are defined below and described in terms of present and proposed flexibility to modify the procedures or techniques included in each category.

The first category, sample collection and holding procedures, includes procedures and reagents used in the field, in transit, and at the laboratory. This category includes sample containers, sample holding times, preservation reagents and procedures, and shipping and storage procedures and conditions. Currently, the Regional Administrator may approve modifications to these procedures for wastewater methods if the submitter so requests as specified at 40 CFR 136.3(c). In the drinking water program, except as explicitly allowed in the compliance method, modifications of sample collection and holding procedures would be approved through the ATP specification at 40 CFR 141.27.

The flexibility proposed in today's rule would not extend to sample collection or holding procedures. Upon implementation of streamlining, modifications to sample collection and preservation conditions would continue to require EPA approval as specified at 40 CFR 136.3(c) and 141.27(b). The latter section, 141.27(b), is a proposed amendment of 40 CFR 141.27 that was written to conform more closely with the modification provisions at 40 CFR 136.3.

Front-end techniques, the second category of method modifications, are steps in the analytical process used at the laboratory that precede the determinative technique and include all procedures, equipment, solvents, etc., that are used to prepare a sample for analysis. The third category is the determinative technique, which is defined as the physical and/or chemical process by which an analyte is identified and its concentration measured. For most methods, the determinative technique consists of an instrumental measurement (e.g., a detector). The fourth category covers increasing the analytical scope of a reference method to include additional analytes.

Historically, the wastewater program has allowed some changes to front-end techniques, but only a few methods allow changes to the determinative step. The drinking water program has allowed similar changes provided the chemistry of the method is not changed. This means that some modifications, such as changing the extraction solvent, are not allowed in drinking water methods unless they receive formal EPA approval.

This proposed rule expands and more clearly defines proposed modifications to approved methods. EPA proposes to allow the laboratory analyst the flexibility to modify any and all front-end techniques, provided the modification is not explicitly prohibited in the reference method and provided the analyst demonstrates and documents that the modification produces results equal or superior to results produced by the reference method. The laboratory analyst would keep on file the documents that demonstrate equivalency. Readers are referred to the Streamlining Guide (EPA 1996a) for more guidance on this subject.

EPA considered restricting the flexibility to change front-end procedures, such as extraction solvents,

solvent-to-sample volumes, extraction media, and pH, because such changes require a deeper understanding of the measurement science than some users may have. However, EPA is not proposing to restrict front-end flexibility because EPA believes it is appropriate to allow the method development and auditing communities an opportunity to comment on a far-reaching change to the current system. The developer of a modified method always would have the option to ask EPA or another regulatory authority for a technical opinion on the acceptability of the validation data that supports the method. In the list of questions at the end of this preamble, EPA invites public comment on what, if any, additional QC would be needed to document the acceptability of front-end modifications to a reference method.

EPA proposes to allow use of an alternate determinative technique that is not explicitly prohibited in the reference method, provided that the analyst could demonstrate and document equivalency as outlined above, and provided that four conditions could be met: (1) The alternate determinative technique measures a property similar to the prescribed technique, (2) the alternate technique is demonstrated to be more specific (i.e., provides better separation of the analyte from interferences) and/or more sensitive (i.e., produces a lower detection limit) for the analyte of concern than the determinative technique in the reference method, (3) there is not another approved method that uses the alternate determinative technique for the determination of that analyte, and (4) use of the alternate determinative technique would not result in a nonsensical combination of analyte, front-end technique, and determinative technique.

Examples of allowed changes to a determinative technique would be substitution of a photoionization detector for a flame ionization detector for determination of polynuclear aromatic hydrocarbons, substitution of a nitrogen-phosphorous detector for an electron capture detector (ECD) for determination of analytes containing nitrogen or phosphorous, and substitution of a fluorescence detector for an ultraviolet or visible wavelength detector. Substitution of a mass spectrometer (MS) for an ECD would not be allowed if there is an approved MS method that measures the analyte of concern. Readers are referred to the Streamlining Guide (EPA 1996a) for more guidance on this subject.

EPA proposes to limit changes to a determinative technique by the four conditions described above to preclude nonsensical combinations of analyte and determinative technique, to encourage a net benefit (increased sensitivity and/or specificity), and to preclude multiple reference methods with the same determinative technique but with different QC acceptance criteria for the same analyte(s) of concern. For example, if a mass spectrometer were substituted for the conventional detectors in EPA methods 601–612, all of these methods would become GC/MS methods, but all would contain different QC acceptance criteria. Further, they would all conflict with approved GC/MS Methods 625 and 1625. The proposed criteria for detector substitution also would be consistent with EPA's decision in the December 5, 1994, drinking water methods final rule (59 FR 62456) not to allow substitution of MS in methods that specify conventional GC detectors.

Another reason for proposing to limit changes to the determinative technique is that there are techniques, such as immunoassay, for which EPA has no reference method and therefore no history to ensure that the standardized QC proposed in today's rule would be germane to, or adequate for, assurance of the quality of data produced by the novel determinative technique. EPA would prefer that a new method be written and submitted for approval when a novel determinative technique is developed. EPA invites public comment on the suitability of the conditions EPA proposes to place on the flexibility to modify determinative techniques in EPA reference methods.

In today's proposed rule, EPA also has specified how the analyst would modify the analytical scope of a reference method to add additional analytes. This option is proposed in response to public comment on previous rules (59 FR 62456, December 5, 1994; 58 FR 65622, December 15, 1993) to extend the scope of a reference method to the determination of other analytes. Method developers seek this approval when they want to adapt an existing method rather than develop a new one to obtain occurrence data for a new analyte. EPA believes these requests would have merit when there is a potential for new regulatory requirements and historical monitoring data would be useful in making process, treatment, or regulatory decisions. Examples of monitoring for a new analyte would include industrial or POTW monitoring for ethers in a discharge, public water system (PWS) monitoring for unregulated pesticides or pesticide metabolites, and PWS monitoring for analytes on the drinking water priority list. EPA also believes these requests would have merit when technological advances would make the measurement of additional analytes feasible (e.g., adding lead to the scope of EPA Method 200.7). Under the proposed flexibility procedures for modified and new methods, developers would obtain approval for the addition of analytes to a reference method as an allowed method modification if the conditions below would be met.

An analyst may add a new target analyte to a reference method provided (1) it could be demonstrated that the analyte would not interfere with determination of the analytes of concern in that method, (2) QC acceptance criteria were developed and employed for determination of the target analyte, (3) there would not be another approved method that uses the same determinative technique for that analyte, and (4) that the reason for adding the analyte would not be to avoid the sample preservation or sample (or extract) holding time conditions that are already required for that analyte in another approved method. The third and fourth criteria would preclude method shopping whereby an analyst might add analytes to a reference method with less rigid QC acceptance, sample collection or holding time criteria. Under the criteria proposed above, if a reference method for an analyte of concern required acidification of the sample, an analyst would not have the flexibility to modify a method that does not require sample acidification to include analysis of the analyte of concern. Modifications of this type would require EPA approval as a new method.

If QC acceptance criteria do not exist to allow addition of a new analyte, the guidelines specified at 40 CFR part 136 Appendix E, at 40 CFR 136.4, 136.5 and 141.27 would be followed to develop and obtain approval for these criteria. Alternatively, QC acceptance criteria for the new analyte could be transferred from the criteria for an analyte with similar chemical characteristics in the same method or from the criteria for the analyte in another approved method. EPA provides additional guidance on developing QC acceptance criteria in Chapter 3 of the Streamlining Guide (EPA 1996a).

B. Quality Control

In order to establish that method modifications do not degrade method performance, a standard would be required against which changes could be compared. This standard would consist of standardized QC elements and QC acceptance criteria that would be listed in the reference method and/

or in the regulations at 40 CFR parts 136 and 141. These criteria would serve as definitive test criteria for evaluating the performance of a method modification. As proposed, new methods would be required to include QC acceptance criteria that were developed from a method validation study according to procedures specified at 40 CFR 136.5, 141.27(c) and (e).

1. Standardized Quality Control Elements

The standardized QC elements, described below, when paired with the relevant QC acceptance criteria for each element, would allow analysts to establish and document method performance. These elements would be specified at 40 CFR part 136 Appendix E and at 40 CFR 136.4, 136.5 and 141.27. Additional guidance on procedures and requirements for these QC elements are provided in the Streamlining Guide (EPA 1996a).

- Calibration—the process of establishing the relationship between the concentration or amount of material introduced into an instrument or measurement process and the output signal.
- Calibration Verification—the means of establishing that instrument performance remains within pre-established limits.
- Initial Precision and Recovery (IPR)—the mechanism to demonstrate that a laboratory would produce reliable results with the method prior to analysis of environmental samples. IPRs also would demonstrate that a method modification produces results equal or superior to those produced by a reference method.
- Ongoing Precision and Recovery—a process that demonstrates that a laboratory is able to produce reliable results continuously.
- Matrix Spike (MS)—a means to assess method performance (especially analyte recovery) on a sample by adding a known amount of the tested analyte.
- Matrix Spike Duplicate—a process to test the precision of an analysis by repeating the MS test.
- Method Blank—a test that checks for laboratory contamination.
- Method Detection Limit (MDL)—the MDL test, as specified at Appendix B of 40 CFR part 136, is used to confirm that a laboratory is capable of detecting an analyte of concern at the level specified in the method or at an acceptable level for regulatory compliance monitoring.
- Reference Sample—a test that serves as an external check on method accuracy.
- Retention Time and Relative Retention Time Precision—a means to assess the performance of a chromatographic separation system; used to aid in the identification of each target analyte in a complex mixture.
- Surrogate—a means to assess the performance of the method within the given sample matrix by adding a known amount of a different but chemically similar analyte. The results of these tests would be used to assess method and laboratory performance.

For each reference method, each QC test would have acceptance criteria that define data acceptability.

2. Development of QC Acceptance Criteria

QC acceptance criteria would be used to ensure that a modified method produces results that are reliable, defensible and suitable for regulatory decisions. QC acceptance criteria would be specified as numeric limits. For example, the QC acceptance criteria for a MS/MSD test may be 75–125 percent recovery with a relative percent difference (RPD) of 20 or less. If these criteria were met for the MS/MSD test, and all other QC acceptance criteria were met, results produced using the modified method could be used for regulatory compliance purposes; if not, corrective action would need to be taken and the sample reanalyzed.

Some methods currently approved at 40 CFR parts 136 and 141 explicitly specify QC acceptance criteria for all of the standardized QC elements outlined in today's proposal, but many do not. In selecting reference methods for today's proposal, EPA chose those methods that contained QC acceptance criteria or data from which QC acceptance criteria could be developed. For those methods that did not contain QC acceptance criteria, QC acceptance criteria were developed from results of single-laboratory or interlaboratory study data contained in the method or from criteria contained in Appendix D of 40 CFR part 136. These criteria are provided at 40 CFR 141.27(d) and 136.3 Table IF for drinking water and wastewater reference methods, respectively. EPA would develop QC acceptance criteria for certain approved methods that do not presently contain these criteria. EPA would propose to designate these approved methods as reference methods in a future rulemaking.

C. Method Validation for Modified or New Methods

Method validation is the process by which an analyst or vendor would establish the performance of a new method or would substantiate the performance of a method modification to a reference method. Validation would be necessary to demonstrate and document that the new or modified method could yield reliable data for compliance monitoring and other purposes. The party who developed the method or method modification would be responsible for validating the method or method modification.

The requirements for validation would depend on the level of intended use for the method modification or new method, and the characteristics of the sample to which the method modification or new method would be applied. Based on interactions with stakeholders, EPA proposes to establish three levels of validation:

- Tier 1 methods would be used in a single laboratory in a single matrix type from one industrial category or subcategory, or in additional matrix types from any industrial category or subcategory.
- Tier 2 methods would be used by all laboratories in one or more matrix types within one industrial category or subcategory.
- Tier 3 methods would be used by all laboratories in matrix types from all industrial categories or subcategories.

Proposed definitions of the terms laboratory, matrix type, medium, and tier are in the definitions sections at 40 CFR 136.2 and 141.2. In the streamlining initiative, the term matrix type would be defined and used to identify a sample medium with common characteristics across a given industrial category or subcategory. The terms facility or system would identify places where an industrial discharge activity occurs or where a water source is treated and distributed as drinking (potable) water. For example, all POTWs that comprise the municipal wastewater treatment industry would be considered to be in one industrial category. A typical municipal POTW has three matrix types: untreated wastewater, treated wastewater, and sludge. All PWSs that comprise the drinking water industry would be considered to be in one industrial category and to be one matrix type—potable water. Similar definitions would apply to matrix types in other industrial categories and subcategories. EPA invites public comment on these definitions and seeks suggestions on additional terms or concepts for which the public believes a regulatory definition would be useful in implementing and administering EPA's methods approval system.

Method validation would comprise three steps: (1) development of a validation study plan, (2) testing, and (3) preparation of a validation study report.

1. Validation Study Plan

A validation study plan would be required for development of a new method at any tier or for modification of a reference method at Tiers 2 and 3. The organization responsible for conducting the study would prepare the validation study plan. Requirements for method validation would be specified at 40 CFR 136.4, 136.5 and 141.27 and at 40 CFR part 136 Appendix E. Additional guidance on suggested validation study

plans is available in the Streamlining Guide (EPA 1996a).

A validation study plan would not be required for Tier 1 method modifications, because EPA would expect that single-laboratory use modifications would be simple and straightforward, and that requiring a validation study plan for single-laboratory modifications would impose an unnecessary regulatory burden on small laboratories.

2. Testing

The number of testing laboratories, matrices, and replicate QC tests for the method validation would depend on the tier at which the new or modified method would be validated, as indicated in Table I below. The specific requirements and procedures for performing QC validation testing are specified at 40 CFR 136.4, 136.5 and at 141.27; additional guidance is available in the Streamlining Guide (EPA 1996a). Table I, which is taken from 40 CFR 136.5(d), summarizes validation requirements at each tier.

TABLE I.—SUMMARY OF VALIDATION REQUIREMENTS FOR NEW METHODS AND METHOD MODIFICATIONS [1]

Method application	Number of			Number of analyses required			
	Labs	Matrix types	Facilities/ PWSs	IPR-reagent water [2]	IPR-sample matrix [3]	MS/MSD	MDL [4]
Tier 1-Single-lab WW/DW—First matrix type or first PWS	1	1	1	4	4	[5] 2	7
WW—Each addt'l matrix type (8 max.) from any industrial category	1	1	1	[6] 0	[6] 0	[5] 2	[6] 0
DW—Each addt'l PWS (2 max.)	1	1	1	[6] 0	[6] 0	[5] 2 [6] 0	
Tier 2-Multi-lab, single matrix type WW/DW—Each matrix type in a single industrial category	3	1	3	12	0	[7] 6	21
Tier 3-Multi-lab, multiple matrix types WW only—All matrix types, all industrial categories	[8] 9	9	9	36	0	[7] 18	63

[1] Numbers of analyses in this table do not include background analyses or additional QC tests such as calibration, blanks, etc. Validation requirements are based on the intended application of the method. Method application would be designated by tier for wastewater (WW) and drinking water (DW) programs. Three would be the maximum number of public water systems (PWSs) that would be required to validate a new or modified drinking water method at Tier 1 or 2. Nine would be the maximum number of matrix types (or facilities) that would be required to validate a new or modified wastewater method at Tier 1 or 3; at Tier 2 the number would be three matrix types.

[2] IPR reagent water analyses would be used to validate a method modification and to establish QC acceptance criteria for initial precision and recovery (IPR) and ongoing precision and recovery (OPR) for a new method. The required number of IPR analyses, except as noted under footnote 7, would be four times the number of laboratories required to validate a method modification or new method because each laboratory would perform a 4-replicate IPR test.

[3] IPR sample matrix analyses would be used to establish QC acceptance criteria for matrix spike/matrix spike duplicate (MS/MSD) recovery and precision for a Tier 1 new method only. Would not be required for validation of Tier 2 or 3 new methods because this variability data would be obtained from MS/MSD tests. Would not be required for validation of a method modification because MS/MSD data from the reference method would be used.

[4] A method detection limit (MDL) test would be performed in each laboratory using the new or modified method. 40 CFR part 136 Appendix B requires a minimum of seven analyses per laboratory to determine an MDL. Each lab involved in validation of a wastewater modification would demonstrate that the modified method would achieve the detection limits specified in the regulations at 40 CFR parts 136 and 141 and/or in chapter 6 of the Streamlining Guide (EPA 1996a).

[5] MS/MSD analyses would be required only for a method modification because, for new methods, the MS/MSD QC acceptance criteria would be established by the 4-replicate sample matrix IPR test. For modified methods, the MS/MSD test would demonstrate that the reference method MS/MSD QC acceptance criteria have been met.

[6] The MDL, reagent water IPR, and sample matrix IPR tests would not have to be repeated after the first matrix type, facility, or PWS was validated.

[7] For validation of a new method, the MS/MSD analyses would establish QC acceptance criteria for MS/MSD recovery and precision. For validation of a method modification, the MS/MSD analyses would demonstrate that reference method MS/MSD recovery and precision have been met. The required number of MS/MSD analyses would be two times the number of facilities, PWSs or matrix types tested.

[8] The number of laboratories and samples would vary if a conventional interlaboratory study is used.

The tiered approach to validating new and modified methods would accommodate variability in the analytical performance of a method that can be attributed to the type of sample analyzed. This variability is termed a matrix effect and can be observed in samples taken at different locations in matrices of the same type (intramatrix) or in samples from different locations and in different matrix types (intermatrix). Under the streamlining initiative, each successive tier addresses matrix effects to a greater degree through increasing levels of sample matrix effect validation, broadly defined as a test of the extent to which differences, if any, in method performance could be attributed to variability between samples obtained from different industrial matrices, facilities, or PWSs. Matrix effects would need to be tested by the IPR sample matrix and MS/MSD analyses listed in Table I. Intramatrix effects would need to be tested in water samples taken from different PWSs or from different waste streams. Intermatrix effects would need to be validated on a group of samples taken from discharge samples collected from several different industrial categories. In all cases, the laboratory would try to determine if the measurement result for the target analyte using a new or modified method differed from the result obtained in a reagent water matrix or in a previously validated matrix type or PWS sample.

As indicated in Table I, a Tier 1 new or modified method would be validated in a single laboratory on one or more matrix types obtained from one or more facilities, or on samples obtained from one or more PWSs. Validation of additional facilities or PWSs would require analysis of MS/MSD samples for each additional facility or PWS. However, in response to stakeholder requests that there should be some maximum number of single-laboratory validations after which further validation would be unnecessary because sample matrix effects would have been sufficiently addressed, EPA

added a provision for a maximum number of matrix type, facility or PWS analyses for Tier 1 methods. For a wastewater method, the maximum number of matrix types or facilities tested under Tier 1 would be nine, each from a different industrial category or subcategory. For a drinking water method, the maximum number of PWS samples tested under Tier 1 would be three samples, each from a PWS with different water quality characteristics. EPA proposes to require validation in three rather than nine PWSs, because three is consistent with the validation data in many EPA drinking water methods and because the variability in drinking water samples (and therefore the probability of matrix effects) is usually less in drinking water samples than in wastewater samples.

Tier 2 validation would be applicable to one or more matrix types within a single industrial category or subcategory. Because Tier 2 new and modified methods would apply to each matrix across all laboratories, EPA developed Tier 2 validation requirements to incorporate intramatrix variability. Tier 2 would require validation of the method in drinking water samples obtained from three PWSs, or wastewater samples of one or more matrix types obtained from three or more facilities within a single industrial category or subcategory.

Tier 3 validation would be applicable to all matrix types in all industrial categories. Consequently, Tier 3 validation requirements would include provisions to account for both intramatrix and intermatrix variability. However, Tier 3 validation would not apply to the drinking water program because the program regulates only one matrix type, drinking (potable) water. The wastewater program regulates several industrial categories, each of which may contain more than one matrix type. Tier 3 would require validation of the method in wastewater samples of up to nine matrix types obtained from nine different facilities.

For all multi-matrix tiers, it would be extremely important to select suitable samples and matrix types for validation. The matrix types, facilities, or PWSs selected for matrix effect validation would need to have sufficiently different water quality characteristics so that the matrix effects, if any, could be observed. Proposed criteria for selecting matrix types, facilities, or PWSs from which to obtain these samples is specified at 40 CFR 136.4(a)(2)(i) and 141.27(b)(iii). Additional guidance on testing sample matrix effects is available in the Streamlining Guide (EPA 1996a).

EPA invites public comment on the number of tests, laboratories, matrix types, facilities, and PWSs that EPA is proposing for validation of Tier 1, 2, or 3 methods. EPA is specifically interested in suggestions for adding, deleting, or modifying the tests listed in Table I. Commenters should provide EPA with reasons for (and preferably data to support) any suggested changes.

3. Validation Study Report

A validation study report would be required for a new method or method modification at all tiers to document successful validation. The primary documents to be included in the report would be the Checklist for Initial Demonstration of Method Performance, the Checklist for Continuing Demonstration of Method Performance (collectively, the ''Checklists''), and a Certification Statement. The Checklists would document that all requirements for establishing equivalency were met; the certification statement would commit the persons involved in the method development or modification effort to the statements made in the Checklists and the supporting information provided. The proposed Checklists would be specified at 40 CFR part 136 Appendix E. The checklists also would be published in the Streamlining Guide (EPA 1996a) with additional guidance on how to complete a checklist for a typical water method. This guidance would be provided to aid the method modifier or developer in understanding the information and test data to be provided. The Checklists and certification statement would be required as part of the validation study report. For Tier 1 method modifications, the Checklists and certification statement would comprise the data validation report. For all tiers, each laboratory involved in validation of a method modification would need to complete the Checklists and Certification Statement. More extensive documentation would be required for a modification at Tiers 2 and 3 and for all new methods.

The validation study report for Tiers 2 and 3 would need to specify the following information, as appropriate, for validation of a new or modified method:

- Narrative—includes (a) a description of the method being validated and the matrices, matrix types, and media to which the method is applicable; (b) an indication of whether the method is a modification of an approved reference method or a new method; (c) reason for and description of the modification, if applicable; and (d) information on the organization responsible for developing the new method or method modification.
- Analyte(s)—name and Chemical Abstracts Service (CAS) Registry Number or an EPA Environmental Monitoring Methods Index (EMMI) Number. If a CAS Registry Number has not been assigned, the submitter should attempt to obtain a number from the CAS Registry. If the CAS Registry will not assign a number, the submitter should contact the AMS Director for assignment of an EMMI Number. A report for a modified method should indicate whether the modification includes all forms of the analyte(s) in the scope of the reference method. The definition of AMS Director is at 40 CFR parts 136.2 and 141.2.
- Method or modified test procedure—prepared in a standard format; modified test procedures would be prepared in the format of the reference method.
- Methodology and procedures—indicates the tier level at which the new or modified method was tested, describes the approach used to implement the study, describes the procedures used to report and validate the data, and identifies the problems encountered during implementation of the study.
- Results—for modified methods, includes a summary of QC results required by the reference method and corresponding QC results obtained with the modified method.
- Conclusions—describes the conclusions and limitations of the study.
- Discussion—critically examines the study results.

The following items would need to be included in appendixes to the validation study report:

- Calculations;
- Raw data to allow an independent reviewer to verify each determination and calculation performed by the laboratory;
- For instruments involving data systems, raw data on magnetic tape or disk (upon request only);
- Names, titles, addresses, and phone numbers of analysts who performed analyses and QA Officer who verified analyses; and
- Completed Checklists and Certification Statement.

The validation study report for a new or modified method would need to be retained on file by the organization responsible for developing or applying the modification, and by regulated entities whose samples are tested with the method modification. The party responsible for developing and submitting the new method also would need to maintain on file the complete records of all validation study tests including the study plan, all laboratory results, the validation study report, completed Checklists and Certification Statement, and other information that supports the new method or method modification. All records would need to be made available for review upon request to an auditor, permitting authority, or other regulatory authority. These records would need to be submitted to EPA if the method

developer elected to request formal approval of a method modification at Tier 2 or 3.

4. Further Validation of a New Method

After completing a Tier 1, 2, or 3 validation study of a new method, the organization responsible for developing the method would need to document the study results in accordance with requirements proposed at 40 CFR part 136 Appendixes E, F, and G and would need to submit the results and the method to EPA for review and approval. If, based on its review of the method, EPA concluded that the method was not sufficiently rugged or reliable for its intended use, EPA would require further method development and testing. The tests and studies that would be performed would need to be determined on a case-by-case basis as these situations arise and would depend on the analyte(s) and the analytical system.

5. Approval of a Screening Method as a New Method

Methods currently approved for compliance monitoring at 40 CFR parts 136 and 141 are considered to be confirmatory methods if the method is sufficiently selective and quantitative so that most positive results do not have to be verified by analysis with another method. The term ''confirmatory'' is used to distinguish these methods from screening methods. When using a screening method, all positive results should be verified by re-analysis with a confirmatory method because screening methods can be less selective and/or quantitative and, therefore, more subject to false positives or imprecise results than confirmatory methods. Characteristics of screening methods are described in more detail in Chapter 2 of the Streamlining Guide (EPA 1996a).

EPA has been asked by many stakeholders to allow use of screening methods for wastewater and drinking water analyses. Although screening methods may be less selective and quantitative than confirmatory methods, they also could be designed to serve meaningful uses under those statutes. Screening methods could be especially useful when measuring trends in the contamination of a water source or when knowledge of the performance of a waste treatment process would be more important than an exact knowledge of the absolute amount and identity of the contaminant or pollutant.

Historically, EPA has not considered screening methods for approval at 40 CFR part 136 or part 141. Under the streamlining initiative, EPA proposes to consider the approval of screening methods for compliance monitoring under the Safe Drinking Water Act provided that: (1) the method would meet all the requirements specified in the regulations at 40 CFR 141.27, (2) all positive sample results obtained with the method would be confirmed and reported using an approved confirmatory method, and (3) the probability of the method producing a false negative result at concentrations of regulatory interest would be no more than one percent (1%). EPA has not yet specified how it intends to implement the use of screening methods under the SDWA; the term was only recently added in the 1996 SDWA amendments. Under the Clean Water Act, EPA is considering the appropriateness of screening methods for use in NPDES permit applications and ambient water quality monitoring by States. EPA proposes to publish a separate table at 40 CFR parts 136 and 141 to list approved screening methods. The Agency invites comment on the approval criteria for screening methods for the uses described in the SDWA, as well as for NPDES permit applications and ambient water quality monitoring.

D. Method Review and Approval

Under this proposed rule, EPA expects to significantly reduce the number of methods that would pass through the ATP review and rulemaking processes. EPA has this expectation because, once implemented, the streamlining initiative would make it easier for method modifications to be judged as being ''within the flexibility allowed by the streamlining initiative.'' Method modifications demonstrated and documented to be within the flexibility allowed by the streamlining initiative would be preapproved by EPA for use at the tier for which the modification was validated. Stakeholder remarks suggest that most laboratories and method development organizations would welcome and use this allowed flexibility.

Stakeholders also have asked EPA to approve more quickly revised versions of approved methods that are periodically published by EPA, consensus standards organizations, and other government agencies. In the past, EPA approved these revisions through a formal proposal and public comment process. Using the flexibility provisions of today's rule, users would be able to use a revised version of a reference method as soon as it is published, provided that the results produced were demonstrated to meet the QC acceptance criteria of the reference method. This benefit alone would relieve much stakeholder frustration, decrease the Agency's rulemaking burden, and improve EPA's partnership with other government agencies and consensus standards organizations.

Table II summarizes EPA's review and rulemaking responsibilities for new and modified methods by tier.

TABLE II.—EPA REVIEW AND ACTION FOR NEW AND MODIFIED METHODS

	New Method	Modified Method
Tier 1, Single-lab	EPA review required; EPA issues a letter of approval.	No EPA review.
Tier 2, Multi-lab, single matrix type	EPA review required; approved through rulemaking	If requested, EPA reviews and —issues letter of approval, or —conducts rulemaking.
Tier 3, Multi-lab, multiple matrix types.	EPA review required; approved through rulemaking	If requested, EPA reviews and —issues letter of approval, or —conducts rulemaking.

1. Review and Approval of New Methods

Currently, all new methods must be approved by EPA through ''formal'' EPA approval including rulemaking and publication at 40 CFR part 136 or 141 before use. In today's rule, EPA proposes to grant letter approvals of new methods that would be submitted under Tier 1 (i.e., single-laboratory, limited-use methods). New methods developed for use under Tiers 2 or 3 would still require rulemaking. The purpose for not requiring formal rulemaking at Tier 1 would be to

provide the means by which (1) a new technology could be introduced, (2) confidentiality of a new technology could be maintained if desired by the user of the new method, and (3) specific matrix interference problems could be overcome. Allowing use of Tier 1 new methods would enable multiple single laboratories to use a new technology until a sufficient number of devices were available for interlaboratory validation as a Tier 2 or 3 new method.

EPA recognizes that allowing single-laboratory use of a new technology for regulatory compliance carries with it the risk that results produced with the new technology may not agree with results produced by a reference method. However, EPA believes that sufficient controls would be included in the streamlining program to ensure data quality. EPA also believes that there would be a net benefit to the regulated community by allowing new technologies that overcome matrix interference problems. EPA solicits comment on this aspect of streamlining, and is particularly interested in alternative ways EPA might allow introduction of new technologies without rulemaking.

2. Review and Approval of Modified Methods

Under the streamlining initiative proposed in today's rule, method modifications would not require formal EPA approval; they would be preapproved provided the analyst demonstrates and documents equivalency with or superiority to the reference method QC criteria. Although formal approval of a modification would not be required under the streamlining initiative, several stakeholders have commented that, in practice, use of a method modification would require the consent of the regulated entity and responsible regulatory authority. These stakeholders also expressed concern that without formal EPA approval, obtaining consent from the regulated entity and/or regulatory authority would be difficult. In response to these comments, EPA proposes to allow, but not require, laboratories, industry associations, consensus standards organizations, instrument manufacturers, and others to submit Tier 2 or Tier 3 method modifications for EPA review with the anticipation of a letter from EPA documenting approval. Also, for those seeking public recognition that their Tier 2 or 3 method modifications have been demonstrated to be acceptable for use, EPA proposes to work with the organization to approve the method at 40 CFR part 136 or 141. EPA would not review, provide letters of approval, or conduct formal rulemaking for Tier 1 method modifications.

EPA recognizes that preapproving method modifications poses additional burdens for regulatory authorities, who may need to assess the reasonableness and effectiveness of each modification. EPA believes, however, that the Checklists, certification statement, and accompanying instructions, which are proposed at 40 CFR part 136 Appendix E, and the validation report for the method modification, which is proposed at 40 CFR part 136 Appendixes F and G, would provide a regulatory authority the information necessary to make equivalency assessments, and that this information would be presented in a standardized and readily understandable format. To further assist regulatory authorities in implementing this initiative, EPA has included detailed guidance on assessing method modifications for equivalency. This guidance is provided in Chapter 6 and in the appendixes of the Streamlining Guide (EPA 1996a).

3. Submission Package

The items to be submitted to EPA for proposal of a new method at Tier 2 or 3 would include the method validation study report, which would include the method prepared in a standard format. If the submitter requested formal rulemaking to propose the method for publication in the CFR, information in a format suitable for inclusion in a draft preamble would also be required. Additionally, the submission packet would need to include all relevant supporting documents.

To preclude a proliferation of potentially confusing formats, a method should be submitted in a standard format. EPA recommends and specifies the format that would be specified at 40 CFR part 136 Appendix F. This format is also detailed in Method Guidelines and Format (EPA 1996c). Appendix F describes all elements of the format prescribed by EPA's Environmental Monitoring Management Council (EMMC). An objective of the EMMC format is to standardize all Agency analytical methods. A standardized format used by a government agency such as the U.S. Geological Survey or from a consensus standards organization such as Standard Methods, ASTM, or AOAC-International could be used, but EPA recommends that these formats be reserved for those organizations to avoid the possible confusion over authorship. EPA would not accept methods in non-standard formats because of the confusion that could be created by a proliferation of method formats.

A new method would need to include the standardized QC elements and QC acceptance criteria. The QC acceptance criteria would need to be developed from data gathered in the method validation study. Chapter 3 of the Streamlining Guide (EPA 1996a) provides guidance on the detailed technical requirements for developing criteria that meet the requirements that would be specified at 40 CFR 136.4, 136.5 and 141.27 and at 40 CFR part 136 Appendix E.

4. Regulatory Assistance Provided by Submitter

Using procedures that would be specified at 40 CFR part 136 Appendix G, EPA would ask method submitters to assist EPA by providing, as part of the submission package for methods to be proposed in the **Federal Register**, information that would facilitate EPA's drafting of a proposed rule. EPA would also ask submitters to provide technical assistance, when necessary, in responding to public comments on the submitter's method. Other assistance could be requested by EPA. The information should be submitted in a format corresponding to the preamble drafting conventions specified by the Office of the Federal Register. Citations of examples for preambles are given in 40 CFR part 136 Appendix G and in the Streamlining Guide (EPA 1996a). Instructions for drafting documents for the Office of the Federal Register are given in the Document Drafting Handbook, for sale by the Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402–9328 (Document 1993 O—351–677 QL3).

5. EPA Review of Submission Package

Upon receipt of a request for approval, EPA would first check the submission packet for completeness. If all of the documentation was in order, EPA would use an internal workgroup to assess the scientific merit of the method or modification and to evaluate the validation study for consistency and appropriateness. Should any problems be identified, the workgroup would contact the submitter to resolve the outstanding issues. If these issues could not be resolved, EPA would take no further action on the submission. If all validation requirements were met and the submission passed internal review, EPA would either issue a letter of approval or begin the rulemaking process. All method modifications are preapproved, but a submitter would have the option to request an EPA letter of approval or to request a formal rulemaking for Tier 2 and 3 method

modifications. All new methods would be subject to EPA review. For Tier 1 new methods, EPA would issue letter approvals; Tier 2 and 3 new methods would require formal Agency rulemaking.

6. Proposal of Methods

For rulemaking, EPA would prepare the proposed rule based on the draft preamble provided by the submitter. EPA would add the appropriate updates to CFR tables or language and submit the proposed rule to the Office of the Federal Register for publication. The proposed rule would request public comment and allow a specified comment period (typically 60 days after publication in the **Federal Register**). At the end of the comment period, EPA would forward significant public comments, if any, to the method submitter. The submitter would need to provide technical assistance to EPA in drafting responses to the comments. If the comments could not be adequately addressed, EPA would not take final action to approve the method. If all comments are addressed, EPA (with assistance from the submitter) would need to complete a response-to-comments document and prepare a final rule to approve the proposed method. The final rule would state the date that the rule becomes effective, typically 30 days after rule publication. As of this effective date, the method would be approved (promulgated) and the appropriate tables in the CFR would be updated.

To expedite approval of noncontroversial updates to methods, such as revisions to the methods published by EPA, other government organizations, and consensus standards organizations, EPA intends to use ''direct final'' rulemaking. Direct final rules would be warranted when the action would not be expected to elicit public comment to which the Agency would normally respond (i.e., no adverse comment). In this process, the final rule and the companion proposal would be published simultaneously as a ''direct final rule'' in the **Federal Register**. In a direct final rule, the proposed rule has a specific comment period and the final rule has a later effective date. If no adverse public comments are received during the comment period for the proposed rule, the actions become effective on the effective date of the final rule. If adverse comment is received, the companion final rule is withdrawn and a second final rule that responds to the public comments is prepared and published with a new effective date.

E. Other Issues

1. Legal Impacts

Stakeholders expressed concern regarding potential conflicts between regulators and regulated entities when using modified methods. For example, there was widespread concern over a situation in which a discharger used a modified method and demonstrated compliance with a regulatory concentration limit while a regulatory authority used the unmodified reference method and obtained results suggesting that the discharger was out of compliance.

Based on internal EPA discussions, it became apparent that the streamlining initiative would work only if the modified method, once demonstrated to be equivalent to the reference method, carried the same legal force and effect as the reference method. Therefore, the difference in results produced by the modified and unmodified methods would be attributable not to the modification, but to differences in results produced by two laboratories. This situation is no different than the existing situation where two laboratories can produce different results, one set of which is above and the other below, a regulatory compliance limit. The legal resolution would therefore remain the same as today—a decision would be made based on examination of all the relevant data.

2. Method-Defined Analytes

The method flexibility introduced in today's proposal does not extend to methods in which some part of the method ''defines'' the analyte of concern. This type of analyte is termed a method-defined analyte. Because method-defined analytes do not have a specific, known composition, the result of the analytical measurement depends totally on how the measurement is made. Examples of method-defined analytes include adsorbable organic halides, biochemical oxygen demand, total organic carbon, and whole effluent toxicity. Changes to the front-end steps or the determinative techniques in these methods have the potential of changing the result produced. EPA believes, however, that certain parts of procedures for method-defined analytes could be modified without adversely affecting method performance.

3. Biological Methods

EPA intends to expand method flexibility to include biological methods, but not in today's proposal. Biological methods include both the testing of an environmental sample for the presence of microbiological material (e.g., bacteria, protozoa and viruses) and the use of biological organisms to measure whole effluent toxicity (WET) of an environmental sample. EPA believes that flexibility in testing for biological material would be similar to the flexibility allowed in the modification to chemical analytical methods. Both the front-end and determinative techniques should be able to be modified when the modifications produce equivalent or superior results. EPA has protocols for some microbiological methods that are currently used in the ATP program (EPA 1995a, b). In a future rulemaking, EPA may revise the microbiology protocols to conform with streamlining and method flexibility procedures. In keeping with Agency goals for a more performance-based approach to all environmental measurements, EPA also may develop and propose method flexibility and new method approval procedures for biological methods and for microbiological parameters not covered under current EPA protocols.

For WET methods, both new and modified methods are possible. New methods may involve the use of a different taxonomic category other than those currently listed at 40 CFR part 136. Method modifications may be defined as the variation of one of the established summary test conditions of the method, such as temperature or salinity. Method modifications to the summary test conditions would not change the acceptance criteria (e.g., control survival) which serve to identify the standards of comparison of the ''reference method.'' EPA has not sufficiently explored this issue to propose the specific requirements to allow flexibility in all approved biological methods. Until EPA can clarify the extent of acceptable flexibility, requests for changes in biological methods would be reviewed and approved on an individual basis.

4. Proprietary Reagents, Instruments, and Methods

Stakeholders expressed concern over the role of proprietary components in the streamlined water method approval process. EPA separates proprietary components into three categories: proprietary reagents, proprietary instruments, and proprietary methods. EPA intends to attempt to accommodate the inclusion of proprietary reagents and instruments in the approval of analytic methods for compliance purposes to the extent that such inclusion still provides an adequate opportunity for public review and comment under the Administrative Procedure Act. EPA does not anticipate,

however, that it could approve the use of proprietary methods for determining compliance with regulatory requirements where the entire method is claimed as ''confidential business information'' because the opportunity for public review and comment might be restricted too severely. If a proprietary method is patented, the method would be considered for approval as a compliance method because the public would be able to comment on the patented method. EPA believes the restriction on approval of proprietary methods is not serious because reagents or instruments, not complete methods, will continue to be the most common proprietary components used in compliance methods.

Proprietary reagents and instruments are currently included for use in approved methods and would continue to be allowed in approved methods. The details of the proprietary elements would need to be disclosed to EPA, but would be withheld from the public if the person requesting protection for the confidential business information (CBI) demonstrates that the information is entitled to confidential treatment under 40 CFR part 2. Examples of proprietary components may include immunoassay reagents and antibodies and liquid phases in GC columns; e.g., DB–1®, SPB-octyl, Dexsil®'', etc. A new or modified method submitted for EPA approval would need to include language stating that the proprietary reagent or instrument could be replaced by an equivalent. Changes made to the method after EPA approval would require the manufacturer to demonstrate, through supporting documentation, that the new proprietary equipment, substance, or reagent would produce results equal or superior to results produced with the material originally tested and on which the method approval is based. Additionally, EPA would not propose a method containing a proprietary reagent without accurate, specific instructions for handling the reagent and for safe disposal of each spent proprietary reagent and/or reaction product. When a material safety data sheet (MSDS) would need to accompany the proprietary material, the MSDS would be the appropriate vehicle to provide these instructions. Submission of a complete MSDS with a new method would satisfy EPA's need for instructions for safe handling and disposal of the reagent.

5. Restrictions by Consensus Standards Organizations

As envisioned, this initiative allows modification to a reference method, provided that the QC acceptance criteria are met. Many of the methods approved at 40 CFR parts 136 and 141 were developed by consensus standard organizations such as Standard Methods, ASTM, and AOAC-International. EPA expects to rely on these and other consensus standards organizations for future methods, as required by the National Technology Transfer and Advancement Act of 1995 (NTTAA) and because of limited Agency resources for method development.

Consensus standards organizations have expressed concern that a modification to their methods would constitute a violation of the method being considered a ''standard.'' Standard Methods, ASTM, and AOAC-International have declined to allow unlimited modification of their approved methods and, therefore, their methods could not serve as reference methods nor be modified under the procedures outlined in this initiative, as can be seen in the proposed CFR tables. This restriction would not greatly affect the streamlining initiative because an EPA method exists that would be used as a reference method for nearly all analytes, and because most methods from consensus standards organizations have sufficient internal flexibility to meet the objectives of streamlining or are updated frequently to reflect recent advances in technologies.

6. Standard Data Format

For this proposed rule, EPA would not establish a standard format for the submission of analytical data because of the large variety of formats currently in use. However, EPA strongly recommends the Department of Energy's Environmental Management Electronic Data Deliverable Master Specification (DEEMS) because it is comprehensive and it would expedite processing of a submitter's request. DEEMS is a list of data elements that laboratories should submit to document the method modification process. A DEEMS data element dictionary is provided in the Streamlining Guide (EPA 1996a).

7. Withdrawal of Outdated Methods

EPA also is considering withdrawal of methods that the Agency believes are obsolete or are no longer used. For example, 40 CFR part 136, Table ID, footnote 3, references methods published in 1978 that include thin-layer chromatography (TLC) methods. Because gas chromatography and high performance liquid chromatography methods provide better monitoring data and are more cost effective, most, if not all, laboratories no longer use TLC methods. The TLC methods were proposed for withdrawal in a previous notice (60 FR 53988, October 18, 1995), and EPA believes there may be similar outdated methods. EPA is conducting a careful examination of Tables IA through IE of 40 CFR part 136 and of the tables at 40 CFR part 141, for obsolete or outdated methods, and intends to propose withdrawal of those methods for which newer methods are available.

8. Administrative Record: Organic Methods, Streamlining Guide, and Method Guidelines and Format

EPA specifies several 600- and 1600-series analytical methods at 40 CFR part 136 Appendix A for analysis of organic chemicals. If the Office of the **Federal Register** approves incorporation by reference of the Appendix A methods, EPA will withdraw Appendix A and publish all of these methods in the document Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater, December 1996, EPA–821–B–96–005, NTIS PB97–125298, ERIC D–A44/D–A47 (Organic Methods, EPA 1996b). This document is part of the administrative record for this proposed rule; copies can be inspected or obtained from NTIS or other sources as described in the **ADDRESSES** section above.

EPA also has drafted two guidance documents that are an integral part of the administrative record for this proposed rule. The first document, Guide to Method Flexibility and Approval of EPA Water Methods, December 1996 Draft, EPA–821–D–96–004, PB97–117766 (Streamlining Guide, EPA 1996a), provides detailed guidance on the overall streamlining initiative. The second document, Guidelines and Format for Methods to Be Proposed at 40 CFR Part 136 or Part 141, EPA–821–B–96–003, PB96–210448, July 1996 (Method Guidelines and Format, EPA 1996c), specifies the content and format required for new methods developed by outside organizations. These documents are readily and widely available to the public through NTIS, online, and other sources listed in the **ADDRESSES** section above.

The Streamlining Guide (EPA 1996a) in particular was drafted to help method developers use the procedures proposed in today's rule to validate and obtain approval of new or modified methods. The guidance was written for use by laboratory auditors, permittees, water utilities, regulatory authorities,

purveyors of new technology, and analytical laboratory personnel. The document is organized into seven chapters, some of which are procedural and others are descriptive, as appropriate to the topic. Chapter 1 summarizes the proposed streamlining initiative. Chapter 2 describes the proposed expanded method flexibility. Chapter 3 describes the proposed standard quality control tests and useful statistical procedures for developing QC acceptance criteria for new methods. Chapter 4 describes the proposed tiered system for validating a new method or a method modification. Chapter 5 describes the proposed method approval process, a standard method format, and procedures for submitting validated methods to EPA for approval. Chapter 6 provides guidance for assessing the method equivalency. Chapter 7 describes possible future plans to extend method flexibility to microbiological and macrobiological methods.

The Streamlining Guide (EPA 1996a) also includes eight appendixes. Appendix A provides a list of acronyms and abbreviations. Appendix B provides a glossary of terms used in the streamlining initiative. Appendix C provides examples of currently allowed method modifications. Appendix D contains a DEEMS data element dictionary, which is a Department of Defense reporting format that EPA suggests would speed review of method validation data. Appendix E provides the EMMC method equivalency checklists and certification statement. Appendix F provides an example of a completed Appendix E checklist. Appendix G contains bibliographic references. Appendix H describes EPA derived the proposed QC acceptance criteria for inorganic chemicals, which are proposed at 40 CFR 136.3 Table IF and 141.27(d)., were calculated.

EPA proposes to make some of the information in the Streamlining Guide (EPA 1996a) and Method Guidelines and Format (EPA 1996c) a regulatory requirement. Specifically, EPA proposes to include much of the information in Chapter 2 (Method Flexibility), Chapter 6 (Assessing Method Equivalency), Chapter 5 (Method Approval Process) and Appendix E (Equivalency Checklists) as a requirement for approval of drinking and wastewater methods. EPA proposes to accomplish this by designating the excerpts from Chapters 2, 5 and 6 as 40 CFR part 136 Appendix G and the equivalency checklists in Appendix E as 40 CFR part 136 Appendix E. Other provisions of the Streamlining Guide (EPA 1996a), including, but not limited to, Table 4–2, definitions of standardized QC elements, QC acceptance criteria for inorganic chemicals, would also be included at 40 CFR 136.2, 136.3 Table IF, 136.4, 136.5, 141.2, and 141.27. EPA would also adopt most of the provisions in Method Guidelines and Format (EPA 1996c) as Appendix F at 40 CFR part 136. EPA invites public comment on these two guidance documents and solicits comments on whether additional guidance in these documents should be a regulatory requirement.

9. Coordination with Other **Federal Register** Proposals

On October 18, 1995 (60 FR 53988), EPA proposed to amend the list of approved methods at 40 CFR part 136 by adding new or revised methods for certain metal and inorganic analytes and by adding method citations to Table IB and amending the incorporation by reference section accordingly. EPA also proposed to withdraw approval of certain outdated or rarely used analytical methods, as well as certain methods that require use of hazardous or toxic reagents. As of today, EPA has not promulgated a final rule implementing the proposed actions.

The methods proposed for withdrawal that relate to this streamlining initiative are primarily the EPA 200-series flame atomic absorption spectrophotometry (FLAA) methods. Although approval of the EPA FLAA methods is proposed to be withdrawn, FLAA methods published by ASTM, Standard Methods, AOAC-International, and USGS would remain approved and would remain listed in 40 CFR 136.3, Table IB. Withdrawal of approval of EPA FLAA methods would remove these methods as reference methods and would remove the QC acceptance criteria associated with these methods. The net impact would be that there would be no FLAA method against which modifications would be made. EPA does not consider this a serious limitation because four FLAA methods (ASTM, Standard Methods, AOAC-International, and USGS) would remain approved for nearly all metals and the flexibility afforded by these methods should adequately cover method modifications.

In 1997, EPA intends to amend the regulations at parts 136 and 141, as appropriate, to update outdated versions of methods to versions published in the 19th edition of Standard Methods (APHA 1995), the 1996 Annual Book of ASTM Standards, Vols. 11.01 and 11.02 (ASTM 1996), and in EPA's August 1995 manual titled, Methods for the Determination of Organic Compounds in Drinking Water—Supplement III (EPA 1995c). If and when the provisions of today's rule are promulgated, EPA expects to be able to list these 1995 and 1996 versions of the compliance methods as approved methods in the tables listed at 40 CFR parts 136 and 141. If inclusion of these more recent versions would provide a basis to change any of the QC acceptance criteria for the reference methods, the public would be notified and provided with the opportunity to comment on the new criteria.

10. Laboratory Certification and Laboratory Auditing

Broad requirements for States to have an approved laboratory certification program for analysis of drinking water samples are specified at 40 CFR 142.10(b)(3). EPA provides more specific help to State certification officers through written and verbal guidance. To improve the uniformity of these certification programs, some laboratory certification officers, method developers, and vendors have asked EPA to provide more specific regulatory requirements. Today's rule responds to these requests by proposing standardized QC elements for all water compliance methods at 40 CFR 136.2 and 141.2, and at Appendix G of 40 CFR part 136. To standardize and facilitate laboratory audits, EPA also would recommend use of several detailed checklists for auditing both modified and unmodified methods. These standardized checklists would be specified at Appendix E of 40 CFR part 136. EPA understands that increasing the analyst's current flexibility to modify steps in a compliance method could make the conduct of laboratory audits more difficult. However, EPA believes that the proposal to specify standardized QC elements for all methods and to require that laboratories use standardized checklists to document and check method performance will ameliorate these potential problems. EPA invites public comment and is especially interested in what additional action, if any, the Agency should take to facilitate the auditing of water laboratories.

IV. Regulatory Analysis

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51,735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100

million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This regulation is not major because it is intended to reduce costs through flexibility and innovation. Therefore, this regulation would not result in a cost to the economy of $100 million or more; would not result in a major increase in costs or prices for consumers or individual industries; and would not have significant adverse effects on competition, investment, innovation, or international trade.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has further determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rulemaking should have minimal financial impact, if any, on the current regulatory burden imposed on regulated entities and regulators because the rulemaking does not establish any additional regulatory requirements. The proposed rule simply provides the option to modify approved methods or propose new methods, if desired. EPA believes that method modifications and new methods would not be used if not cost effective. Thus, today's rule is not subject to the requirements of sections 202, 203, and 205 of the UMRA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare a final regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This regulatory action does not have any adverse impact on either small or large entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* shortly. EPA is preparing an information collection request (ICR) document for this proposed rule and will solicit public comment on it prior to promulgating a final regulation. Comments on the proposed rule, preamble, and ICR will all be considered before a final rule is promulgated. The information collection requirements in this proposal are described in Parts III.A (Method Flexibility), III.B (Quality Control), III.C (Method Validation), III.D (Method Review), and III.E.6 (Standard Data Format). The information collection requirements in this proposal are specified in Appendix E (Equivalency Checklists), Appendix F (Guidelines and Format for Methods) and Appendix G (Method Flexibility, Equivalency, and Approval) of 40 CFR part 136 and at 40 CFR 136.3(d); 136.4 (b) and (c); 136.5 (a), (b), (c), and (d); and at 40 CFR 141.27 (a), (b), and (c).

The information requirements are not effective until OMB approves them. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

V. Request for Comments

A. General

EPA is interested in eliciting constructive comments that would allow the Agency to incorporate flexibility into existing methods and to streamline the proposal and promulgation of new methods at 40 CFR parts 136 and 141. On the other hand, EPA is interested in compelling reasons why such a program may not work, even with extensive built-in controls to ensure that the results produced by modified or new analytical methods are reliable. EPA looks forward to working with all interested and concerned parties to produce an improved system for methods approval under the water methods program.

B. Specific

EPA is soliciting public comment on the following specific questions and options that relate to technical and policy decisions that EPA may need to make to implement the streamlining initiative.

1. As described in this preamble and the Streamlining Guide (EPA 1996a), the streamlining initiative would use a performance-based approach in which a reference method that contains or is supplemented with QC acceptance criteria is the standard against which a method modification would be tested to demonstrate equivalency. In contrast to the proposed performance-based reference-method approach, another performance-based approach would be to specify only the QC acceptance

criteria without the need for a reference method. Should EPA retain the proposed reference method approach with QC acceptance criteria? Or should EPA change to a QC acceptance criteria approach only?

2. Regarding question number one above, for what analytes, methods or monitoring situations, if any, do you believe EPA should allow use of either the performance-based reference method approach or the QC acceptance criteria only approach?

3. It may not be appropriate to develop QC acceptance criteria to allow modification of methods for ''method-defined parameters,'' such as biochemical oxygen demand or total suspended solids. What chemical, microbiological, or biological analytes or analytical procedures do you believe might not be amenable to streamlining or method flexibility procedures?

4. Should EPA implement streamlining and method flexibility procedures only for new regulatory actions? Should EPA apply these procedures to existing regulatory requirements but only when these requirements are updated for some other purpose? Or should EPA apply these proposed procedures to existing regulations now?

5. EPA has undertaken several pilot studies of new methods to test the streamlined method approval process, and expects the pilots to be completed prior to promulgation of a final rule. Should EPA conduct more extensive pilot studies, e.g., several pilots at each tier, or should the changeover take place as soon as possible? If a pilot or phase-in approach is adopted, should EPA phase-in by analyte group (e.g., VOCs, metals, pesticides)? Or by the technologies employed by the reference method (electron capture, mass spectrometry)?

6. Is the proposed flexibility to modify the front-end and determinative steps in a reference method broad enough to be of value to the methods development community? For what steps in a reference method, if any, would you increase or decrease the flexibility to modify a method? If method flexibility were broadened, what additional standardized QC elements or checklist items should be added to ensure and document acceptable performance of the modification?

7. If you believe that the proposed flexibility is too broad for some methods, would you prefer that EPA limit flexibility by revising approved methods to indicate the steps that could or could not be changed? If yes, for which steps in a method (e.g., extraction/digestion, concentration, determinative) or for which types of method (e.g., those with method-defined analytes) should changes be allowed or prohibited? If possible, please cite methods listed in 40 CFR part 136 or 141 as examples.

8. If method flexibility were implemented as proposed, are the standardized QC elements (accuracy, precision, detection limit, calibration, reference sample, matrix spikes, etc.) described in part III.C of this proposal and in the Streamlining Guide (EPA 1996a) adequate to validate the acceptability of a modification to a reference method? If not, which QC elements should be added? On the other hand, are the QC elements too extensive? If yes, which QC elements should be deleted? And why?

9. There has been some concern about the effect that changes to the chemistry of a method may have on a laboratory or method developer's ability to validate the performance of a modified method using the Checklists and other requirements in the Streamlining Guide (EPA 1996a). For example, what effect, if any, might changing the extraction solvent have on extract holding times that would not be picked up by the Checklists' criteria? What effect, if any, might use of a different extraction technique or a different solvent-to-sample ratio have that would not be picked up by the standardized QC? What, if any, QC elements should be changed or added to mitigate these concerns?

10. Once EPA adopts streamlining and method flexibility procedures, should EPA continue to develop and publish new methods or should EPA rely on the private sector and consensus standards organizations? In addressing this question, please consider the effect on small laboratories, PWSs, and POTWs, if EPA discontinued providing EPA methods.

11. EPA has determined that, for wastewater programs, a modified method, once validated and documented in accordance with the details in this proposal, would carry the same force and legal effect as a reference method. Do stakeholders believe that a modified method should have equal status with a reference method? Or should EPA require different levels of documentation for data gathered with the modified method? If a modified method had a different level of documentation, would stakeholders accept that it has legal status equal to that of an unmodified method?

12. Should EPA change the QC acceptance criteria in a reference method when a significant technological advance or some other factor demonstrates that the criteria could be made more rigorous? In your response, you may assume that changing the criteria would not adversely decrease the number of qualified laboratories needed to conduct compliance monitoring with the more rigorous method.

13. EPA plans to implement streamlining and method flexibility for water methods through informal gathering of public comment and through rulemaking (**Federal Register** proposal, public comment, and final rule), of which this proposal is a part. Are there additional measures needed to ensure that all stakeholders would be aware of the initiative and, if so, what additional steps should EPA take?

14. Given that a laboratory would be able to modify a method without prior EPA approval, how would current EPA and state laboratory auditing and certification programs continue to ensure that the regulated community is properly conducting monitoring activities and documenting monitoring system performance? Should documentation be retained at the testing laboratory? At the facility? Or should EPA require that the data be submitted to EPA or other regulatory authority with each data package that results from use of the modification?

15. Adoption of streamlining and method flexibility procedures would require a deeper understanding of the science behind measurement methods. Consequently, ''first-line'' compliance and enforcement efforts may require additional resources and training of auditors. What training would EPA, the Regions, the States, laboratories, and the regulated community need to employ to successfully implement streamlining or method flexibility procedures? What courses could be developed, and who should be responsible for their development?

16. Under the streamlining initiative, requests for approval of new methods (i.e., new technologies or determinative techniques) would be submitted to EPA under a streamlined ATP-type program. Should EPA process these requests in the order received or should EPA have the discretion to accelerate review of methods that provide the most benefit to the Agency's regulatory program and/or to the needs of the regulated community?

17. What additional steps, if any, should the Agency take to ensure that the use of method flexibility does not compromise enforceability of applicable statutes and regulatory requirements? Will additional training be sufficient or will inspectors need additional qualifications to be able to assess the

quality of CWA and SDWA compliance data produced by a modified or new reference method? What resources would be required to mitigate concerns about the need for appropriate training of inspectors?

18. EPA proposes to define several administrative (e.g., Assistant Administrator, AMS Director) and technical (e.g. screening method, standardized quality control) terms in the definitions at 40 CFR 136.2 and 141.2 and invites public comment on these definitions. Should EPA omit any of the proposed definitions to avoid unnecessary confusion or restrictions? Are there additional terms or concepts for which a regulatory definition would be useful in implementing and administering EPA's proposed methods approval system?

19. EPA invites public comment on the guidance contained in the Streamlining Guide (EPA 1996a) and in Method Guidelines and Format (EPA 1996c). These documents, which are part of the administrative record for this proposal, provide guidance on method flexibility and method validation procedures under the proposed streamlining initiative. The documents also provide examples of certification statements and checklists that would satisfy EPA's proposed requirements for documenting the performance and equivalency of a modified or new method. Portions of these documents are proposed to be regulatory requirements (for example, see the proposed Appendixes E, F, and G and other amendments to 40 CFR parts 136 and 141). Which, if any, of the proposed requirements should EPA remove from the regulations and only keep as guidance?

20. In future rulemakings, EPA may propose to make more of the information in the two documents described above regulatory requirements. EPA would accomplish this by amending the wastewater and drinking water regulations or, with the approval of the Office of the Federal Register, incorporate by reference all or parts of the Streamlining Guide (EPA 1996a) and Method Guidelines and Format (EPA 1996c) into the CFR. What, if any, additional guidance from these documents should EPA propose as a regulatory requirement?

VI. References

- APHA. 1995. Nineteenth edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.
- ASTM. 1996. Annual Book of ASTM Methods, 1996, Vol. 11.01 and 11.02, American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.
- EPA. 1995a. Protocol for Alternate Test Procedures for Coliform Bacteria in Compliance with Drinking Water Regulations: Presence/Absence Liquid Culture Methods for Finished Waters, Ver. 1.2, December 1995, U.S. Environmental Protection Agency.
- EPA. 1995b. Protocol for Alternate Test Procedures for Coliform Bacteria in Compliance with Drinking Water Regulations: Presence/Absence Membrane Filter Methods for Finished Waters, Ver. 1.2, December 1995, U.S. Environmental Protection Agency.
- EPA. 1995c. Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA–600/R–95–131, August 1995, NTIS PB95–261616.
- EPA. 1996a. Guide to Method Flexibility and Approval of EPA Water Methods, December 1996 Draft, EPA–821–D–96–004, NTIS PB97–117766, ERIC D–A43/D–A46 (Streamlining Guide, EPA 1996a).
- EPA. 1996b. Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater, December 1996, EPA–821–B–96–005, NTIS PB97–125298, ERIC D–A44/D–A47 (Organic Methods, EPA 1996b).
- EPA. 1996c. Guidelines and Format for Methods to Be Proposed at 40 CFR Part 136 or Part 141, EPA–821–B–96–003, NTIS PB96–210448, ERIC D–A42/D–A45, July 1996 (Method Guidelines and Format, EPA 1996c).
- EPA. 1996d. Draft Memorandum from Assistant Administrators, ''Implementation Plan for the Agency Performance-Based Measurement System,'' October 25, 1996, U.S. Environmental Protection Agency.
- EPA. 1996e. Memorandum from Robert Perciasepe, ''Agency-wide Adoption of the Performance-Based Measurement System Approach,'' November 1, 1996, U.S. Environmental Protection Agency.

List of Subjects

40 CFR Part 136

Environmental protection, Laboratories, Water pollution control, Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Laboratories, Water supply, Reporting and recordkeeping requirements.

Dated: March 17, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority for part 136 is proposed to be revised to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, et seq. (33 U.S.C. 1251, et seq.).

* * * * *

2. Section 136.2 is proposed to be revised to read as follows:

§ 136.2 Definitions.

As used in this part, the term:

Accuracy means the degree of agreement between an observed value and an accepted reference value. Accuracy includes random error (precision) and systematic error (bias) that are caused by sampling and analysis.

Act means the Clean Water Act.

Administrator means the Administrator of the U.S. Environmental Protection Agency (EPA).

Analyte or Analyte of concern means a substance or property that is to be measured by an analysis.

Approved method means a testing procedure or analytical method promulgated at this part or at 40 CFR parts 405 through 500.

Assistant Administrator (AA) means the EPA Assistant Administrator for Water.

Calibration (CAL) means the process of establishing the relationship between the concentration or amount of material introduced into an instrument or measurement process and the output signal.

Calibration linearity means the degree to which calibration points lie along a straight line.

Calibration verification means the means of establishing that instrument performance remains within pre-established limits.

Determinative technique means the process (physical or chemical or both) to measure the identity and concentration of an analyte. In test methods, the determinative technique follows the front-end techniques.

Director means the Director of the State Agency authorized to carry out an approved National Pollutant Discharge Elimination System Program under section 402 of the Act.

Front-end technique means any technique in the analytical process that precedes the determinative technique, including all procedures, equipment, solvents, etc. that are used in the laboratory in the preparation and cleanup of a sample but this excludes conditions and/or procedures for the collection, preservation, shipment and storage of the sample.

Initial precision and recovery test (IPR) means analysis of a minimum of four spiked replicate reference matrix samples under the same conditions as

will be used for analysis of environmental samples. The IPR is used to demonstrate that a laboratory is able to produce reliable results with the method prior to analysis of environmental samples.

Interference means a positive or negative effect on a measurement caused by a substance other than the analyte being determined.

Matrix means the component or substrate that contains the target analyte.

Matrix spike (MS) means a sample prepared by adding a known quantity of target analyte to a specified amount of a sample matrix for which an independent estimate of target analyte concentration is available.

Matrix spike duplicate (MSD) means a duplicate of the matrix spike. The MS/MSD are used in combination to test the precision of an analysis.

Matrix type means a sample medium with common characteristics across a given industrial category or industrial subcategory. Examples include: C-stage effluents from chlorine bleach mills in the Pulp, Paper, and Paperboard industrial category; effluent from the continuous casting subcategory of the Iron and Steel industrial category; publicly owned treatment work (POTW) sludge; and in-process streams in the Atlantic and Gulf Coast Hand-shucked Oyster Processing subcategory.

Medium means the physical phase of a sample matrix. Air, water, soil, sediment, rock, and sludge are sample media.

Method means an orderly and systematic arrangement of procedures and techniques for performing an analysis.

Method blank (or *blank*) means a sample absent the analytes of interest and interferences, which is processed through all steps of a method simultaneously with and under the same conditions as samples that may contain an analyte of interest.

Method detection limit (MDL) means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero as determined by the procedure set forth in appendix B of this part.

Method Guidelines and Format means the procedures set forth in appendix F of this part.

Method modification means a change to a reference method. The change may be to a front-end technique or to the determinative technique.

Method validation means a process by which a laboratory or vendor establishes the performance of a new method or substantiates the performance of a method modification.

Minimum level (ML) means the lowest level at which an entire analytical system gives a recognizable signal and acceptable calibration point for an analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and clean-up procedures have been employed.

National Pollutant Discharge Elimination System (NPDES) means the national system for the issuance of permits under section 402 of the Clean Water Act and includes any State or interstate program which has been approved by the Administrator, in whole or in part, pursuant to section 402 of the Clean Water Act.

New method means a combination of analyte of concern and determinative technique that is different from those in the approved methods.

Ongoing precision and recovery sample (OPR) means a spiked reference matrix sample that is processed through all steps of a method simultaneously with and under the same conditions as samples that may contain an analyte of interest. Also called a laboratory control sample (LCS), the OPR/LCS is used to demonstrate that a laboratory is able to produce reliable results continuously.

Organic Methods means the document titled: Methods for the Determination of Organic Compounds in Drinking Water—Supplement III (available from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia, 22161, 703/487–4600, at NTIS publication PB97–125298).

Other approved method means a promulgated method that is not designated as a reference method.

Percent recovery means the recovery multiplied by one hundred.

Person means an individual; corporation; company; association; partnership; municipality; or State, Federal, or tribal agency.

Precision means the degree to which a set of observations or measurements of the same property, usually obtained under similar conditions, conform. Precision is usually expressed as standard deviation, variance, or range, in either absolute or relative terms.

Preparation means processing performed on a sample prior to analysis, including extraction, concentration, and cleanup.

Procedure means a set of systematic instructions for performing an activity.

Promulgated method means a method that has been published or incorporated by reference into 40 CFR parts 136 or 405 through 500.

Quality assurance (QA) means an integrated system of activities involving planning, quality control, quality assessment, reporting, and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

Quality control (QC) means the overall system of technical activities conducted to measure and control the quality of a product or service so that it meets the needs of a user. The purpose of QC is to provide quality that is satisfactory, adequate, dependable, and economical.

Quality control acceptance criteria (QC acceptance criteria) means performance specifications developed from validation data and used to control the limits within which an analytical method is operated.

Recovery means the total amount of analyte found divided by the amount of analyte added as a spike.

Reference method means an approved method that is designated as a standard to which a modified method can be compared. A reference method includes standardized QC and QC acceptance criteria as well as sample preparation, cleanup, and other procedures.

Regional Administrator means an EPA Regional Administrator.

Screening method means a method that employs a qualitative determinative technique for an analyte of interest that is different from the determinative techniques used in the approved methods for that analyte. The screening method should produce a false negative probability less than 1%.

Selectivity means the capability of a method or instrument to respond to an analyte in the presence of interferences.

Sensitivity means the capability of a method or instrument to differentiate between different amounts or concentrations of an analyte.

Spike means the process of adding a known amount of an analyte to a sample to determine the recovery.

Spike amount means a known quantity of analyte added to a sample and used to determine the recovery of a method.

Standard deviation means the measure of the dispersion of observed values expressed as the positive square root of the sum of the squares of the difference between the individual values of a set and the arithmetic mean of the set, divided by one less than the number of values in the set.

Standardized quality control (standardized QC) means a uniform set of performance testing procedures that ensure reliable results. Depending on

the method, standardized QC procedures include, but are not limited to, the following: calibration, calibration linearity, calibration verification, absolute retention time, absolute and relative retention time precision, initial precision and recovery, ongoing precision and recovery (laboratory control sample), surrogate or labeled compound recovery, analysis of blanks, matrix spike and matrix spike duplicate recovery and precision, demonstration of method detection limit(s), and analysis of a reference sample.

Surrogate means a substance with properties that mimic the behavior of an analyte, that is unlikely to be found in an environmental sample, and that is added to the sample for quality control purposes.

Tier 1 means the application of a new or modified method in a single laboratory to one or more matrix types.

Tier 2 means the application of a new or modified method by all laboratories to one or more matrix types within a single industrial category or subcategory.

Tier 3 means the application of a new or modified method by all laboratories to all matrix types in all industrial categories and subcategories (nationwide use).

3. Section 136.3 is proposed to be amended by revising the last two sentences and Tables IB, IC, and ID in paragraph (a); by adding Table IF in paragraph (a); by revising paragraphs (c) and (d); and by removing paragraph (e) (Table II following paragraph (e) is unchanged) to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

(a) * * *

The discharge parameter values for which reports are required must be determined by one of the standard analytical test procedures incorporated by reference and described in Tables IA, IB, IC, ID, and IE, or by any alternate test procedure which has been approved by the Administrator or Assistant Administrator under the provisions of paragraph (d) of this section and §§ 136.4 and 136.5. Under paragraphs (b), (c) of this section and 40 CFR 401.13 alternate test procedures may be used when such other test procedures have been previously approved by the Administrator, Assistant Administrator, or Regional Administrator of the Region in which the discharge will occur, and providing the Director of the State in which such discharge will occur does not object to the use of such alternate test procedure. Standardized QC and QC acceptance criteria for modifications of the inorganic contaminant reference methods in Table IB are specified in Table IF.

* * * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
1. Acidity, as $CaCO_3$, mg/L:						
Electrometric endpoint or phenolphthalein endpoint.	305.1	2310 B(4a)	D1067–92			
2. Alkalinity, as $CaCO_3$, mg/L:						
Electrometric or Colorimetric titration to pH 4.5, manual or automated.	310.1 310.2	2320 B	D1067–92	I–1030–85 I–2030–85	973.43 [3]	
3. Aluminum—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	202.1	3111 D		I–3051–85		
AA furnace	202.2	3113 B				
Inductively Coupled Plasma/Atomic Emission Spectrometry (ICP/AES).[36].	[5] 200.7	3120 B				
Direct Current Plasma (DCP) [36]	.....		D4190–82(88)			AES0029 [34]
Colorimetric (Eriochrome cyanine R)	.....	3500–Al D				
4. Ammonia (as N), mg/L:						
Manual, distillation (at pH 9.5) [6] followed by:.	350.2	4500–NH_3 B			973.49 [3]	
Nesslerization	350.2	4500–NH_3 C	D1426–93(A)	I–3520–85	973.49 [3]	
Titration	350.2	4500–NH_3 E				
Electrode	350.3	4500–NH_3 F or G	D1426–93(B)			
Automated phenate	350.1	4500–NH_3 H		I–4523–85		
Automated electrode	.....					379–75WE [7]
5. Antimony—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	204.1	3111 B				
AA furnace	204.2	3113 B				
ICP/AES [36]	[5] 200.7	3120 B				
6. Arsenic—Total,[4] mg/L:						
Digestion [4] followed by	206.5					
AA gaseous hydride	206.3	3114 B 4.d	D2972–93(B)	I–3062–85		
AA furnace	206.2	3113 B	D2972–93(C)			
ICP/AES [36]	[5] 200.7	3120 B				
Colorimetric (SDDC)	206.4	3500–As C	D2972–93(A)	I–3060–85		
7. Barium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	208.1	3111 D		I–3084–85		
AA furnace	208.2	3113 B	D4382–91			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]	.....					AES0029 [34]
8. Beryllium—Total,[4] mg/L; Digestion [4] followed by:						

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
AA direct aspiration	210.1	3111 D	D3645–93(88)(A)	I–3095–85		
AA furnace	210.2	3113 B	D3645–93(88)(B)			
ICP/AES	[5] 200.7	3120 B				
DCP			D4190–82(88)			AES0029 [34]
Colorimetric (aluminon)		3500–Be D				
9. Biochemical oxygen demand (BOD_5), mg/L:						
Dissolved Oxygen Depletion	405.1	5210 B		I–1578–78 [8]	973.44 [3]	p. 17 [9]
10. Boron [37]—Total, mg/L:						
Colorimetric (curcumin)	212.3	4500–B B		I–3112–85		
ICP/AES	[5] 200.7	3120 B				
DCP			D4190–82(88)			AES0029 [34]
11. Bromide, mg/L:						
Titrimetric	320.1		D1246–82(88)(C)	I–1125–85		p. S44 [10]
12. Cadmium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	213.1	3111 B or C	D3557–90 (A or B)	I–3135–85 or I–3136–85	974.27 [3]	p. 37 [9]
AA furnace	213.2	3113 B	D3557–90(C)			
ICP/AES [36]	[5] 200.7	3120 B		I–1472–85		
DCP [36]			D4190–82(88)			AES0029 [34]
Voltametry [11]			D3557–90(C)			
Colorimetric (Dithizone)		3500–Cd D				
13. Calcium-Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	215.1	3111B	511–93(B)	I–3152–85		
ICP/AES	[5] 200,7	3120 B				
DCP						AES0029 [34]
Titrimetric (EDTA)	215.2	3500–Ca D	511–93(A)			
14. Carbonaceous biochemical oxygen demand ($CBOD_5$), mg/L [12]:						
Dissolved Oxygen Depletion with nitrification inhibitor.		5210B				
15. Chemical oxygen demand (COD), mg/L; Titrimetric						
	410.1 410.2 410.3	5220 C	D1252–88(A)	I–3560–85 I–3562–85	973.46 [3]	p. 17 [9]
Spectrophotometric, manual or automated.	410.4	5220 D	D1252–88(B)	I–3561–85		Notes 13 or 14
16. Chloride, mg/L:						
Titrimetric (silver nitrate)		4500–Cl^- B	D512–89(B)	I–1183–85		
(Mercuric nitrate)	325.3	4500–Cl^- C	D512–89(A)	I–1184–85	973.51 [3]	
Colorimetric, manual				I–1187–85		
Automated (Ferricyanide)	325.1 or 325.2	4500–Cl^- E		I–2187–85		
17. Chlorine-Total residual, mg/L; Titrimetric:						
Amperometric direct	330.1	4500–Cl D	D1253–86(92)			
Iodometric direct	330.3	4500–Cl B				
Back titration ether end-point [15]	330.2	4500–Cl C				
DPD-FAS	330.4	4500–Cl F				
Spectrophotometric, DPD	330.5	4500–Cl G				
or Electrode						Note 16
18. Chromium VI dissolved, mg/L; 0.45 micron filtration followed by:						
AA chelation-extraction	218.4	3111 C		I–1232–85		
Colorimetric (Diphenylcarbazide)		3500–Cr D	D1687–92(A)	I–1230–85		
19. Chromium-Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	218.1	3111 B	D1687–92(B)	I–3236–85	974.27 [3]	
AA chelation-extraction	218.3	3111 C				
AA furnace	218.2	3113 B	D1687–92(C)			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]			D4190–82(88)			AES0029 [34]
Colorimetric (Diphenylcarbazide)		3500–Cr D				

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
20. Cobalt-Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	219.1	3111 B or C	D3558–90(A or B)	I–3239–85		p. 37 [9]
AA furnace	219.2	3113 B	D3558–90(C)			
ICP/AES	[5] 200.7	3120B				
DCP			D4190–82(88)			AES0029 [34]
21. Color platinum cobalt units or dominant wavelength, hue, luminance purity:						
Colorimetric (ADMI)	110.1	2120 E				Note 18
(Platinum cobalt)	110.2	2120 B		I–1250–85		
Spectrophotometric	110.3	2120 C				
22. Copper—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	[5] 220.1	3111 B or C	D1688–90(A or B	I–3270–85 or I–3271–85	974.27 [3]	p. 37 [9]
AA furnace	220.2	3113 B	D1688–90(C)			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]			D4190–82(88)			AES0029 [34]
Colorimetric (Neocuproine)		3500–Cu D				
(Bicinchoninate)		Or E				8506 [19]
23. Cyanide—Total, mg/L:						
Manual distillation with $MgCl_2$ followed by.		4500–CN C	D2036–91(A)			
Titrimetric		4500–CN D				p. 22 [9]
Spectrophotometric, manual	[31] 335.2	4500–CN E	D2036–91(A)	I–3300–85		
Automated [20]	[31] 335.3					
24. Cyanide amenable to chlorination, mg/L:						
Manual distillation with $MgCl_2$ followed by titrimetric or Spectrophotometric.	335.1	4500–CN G	D2036–91(B)			
25. Fluoride—Total, mg/L:						
Manual distillation [6] followed by		4500–F B				
Electrode, manual	340.2	4500–F C	D1179–93(B)			
Automated				I–4327–85		
Colorimetric (SPADNS)	340.1	4500–F D	D1179–93(A)			
Automated complexone	340.3	4500–F E				
26. Gold—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	231.1	3111 B				
AA furnace	231.2					
DCP						AES0029 [34]
27. Hardness—Total, as $CaCO_3$, mg/L:						
Automated colorimetric	130.1					
Titrimetric (EDTA), or Ca plus Mg as their carbonates, by inductively coupled plasma or AA direct aspiration. (See Parameters 13 and 33)..	130.2	2340 B or C	D1126–86(92)	I–1338–85	973.52B [3]	
28. Hydrogen ion (pH), pH units:						
Electrometric measurement	150.1	4500–H^+ B	D1293–84(90) (A or B)	I–1586–85	973.41 [3]	
Automated electrode						378–75WA [21]
29. Iridium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	235.1	3111 B				
AA furnace	235.2					
30. Iron—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	236.1	3111 B or C	D1068–90 (A or B)	I–3381–85	974.27 [3]	
AA furnace	236.2	3113 B	D1068–90(C)			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]			D4190–82(88)			AES0029 [34]
Colorimetric (Phenanthroline)		3500–Fe D	D1068–90(C)			8008 [22]
31. Kjeldahl Nitrogen—Total, (as N), mg/L:						
Digestion and distillation followed by	351.3	4500–NH_3 B or C	D3590–89(A)			
Titration	351.3	4500–NH_3 E	D3590–89(A)		973.48 [3]	
Nesslerization	351.3	4500–NH_3 C	D3590–89(A)			

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
Electrode	351.3	4500–NH_3 F or G				
Automated phenate colorimetric	351.1			I–4551–78 [8]		
Semi-automated block digestor colorimetric.	351.2		D3590–89(B)			
Manual or block digestor Potentiometric	351.4		D3590–89(A)			
32. Lead—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	239.1	3111 B or C	D3559–90 (A or B)	I–3399–85	974.27 [3]	
AA furnace	239.2	3113 B	D3559–90(C)			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]	.....		D4190–82(88)			AES0029 [34]
Voltametry [11]	.....		D3559–90(C)			
Colorimetric (Dithizone)	.....	3500–Pb D				
33. Magnesium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	242.1	3111 B	D511–93(B)	I–3447–85	974.27 [3]	
ICP/AES	[5] 200.7	3120 B				
DCP	.....					AES0029 [34]
Gravimetric	.....	3500–Mg D				
34. Manganese—Total [4], mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	243.1	3111 B	D858–90 (A or B)	I–3454–85	974.27 [3]	
AA furnace	243.2	3113 B	D858–90(C)			
ICP/AES [36]	200.7	3120 B				
DCP [36]	[5] 200.7	3120 B				AES0029 [34]
Colorimetric (Persulfate)	.....	3500–Mn D			920.203 [3]	
(Periodate)	.....					8034 [23]
35. Mercury—Total[4], mg/L:						
Cold vapor, manual	245.1	3112 B	D3223–91	I–3462–85	977.22 [3]	
Automated	245.2					
36. Molybdenum—Total [4], mg/L; Digestion [4] followed by:						
AA direct aspiration	246.1	3111 D		I–3490–85		
AA furnace	246.2	3113 B				
ICP/AES	[5] 200.7	3120 B				
DCP	.....					AES0029 [34]
37. Nickel—Total [4], mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	249.1	3111 B or C	D1886–90 (A or B)	I–3499–85		
AA furnace	249.2	3113 B	D1886–90(C)			
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]	.....		D4190–82(88)			AES0029 [34]
Colorimetric (heptoxime)	.....	3500–Ni D				
38. Nitrate (as N), mg/L:						
Colorimetric (Brucine sulfate), or Nitrate-nitrite N minus Nitrite N (See parameters 39 and 40).	352.1				973.50 [3]	419 D [17], p. 28 [9]
39. Nitrate-nitrite (as N), mg/L:						
Cadmium reduction, manual	353.3	4500–NO_3^- E	D3867–90(B)			
Automated	353.2	4500–NO_3^-F	D3867–90(A)	I–4545–85		
Automated hydrazine	353.1	4500–NO_3^-H				
40. Nitrite (as N), mg/L; Spectrophotometric:						
Manual	354.1	4500–NO_2^- B				8507 [25]
Automated (Diazotization)	.....			I–4540–85		
41. Oil and grease—Total recoverable, mg/L:						
Gravimetric (extraction)	413.1	5520 B [38]				
42. Organic carbon—Total (TOC), mg/L:						
Combustion or oxidation	415.1	5310 B, C, or D	D2579–93 (A or B)		973.47 [3]	p. 14 [24]
43. Organic nitrogen (as N), mg/L:						
Total Kjeldahl N (Parameter 31) minus ammonia N (Parameter 4)..	.....					
44. Orthophosphate (as P), mg/L Ascorbic acid method:						
Automated	365.1	4500–P F		I–4601–85	973.56 [3]	

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
Manual single reagent	365.2	4500–P E	D515–88(A)		973.55 [3]	
Manual two reagent	365.3					
45. Osmium—Total [4], mg/L; Digestion[4] followed by:						
AA direct aspiration	252.1	3111 D				
AA furnace	252.2					
46. Oxygen, dissolved, mg/L:						
Winkler (Azide modification)	360.2	4500–O C	D888–92(A)	I–1575–78 [8]	973.45B [3]	
Electrode	360.1	4500–O G	D888–92(B)	I–1576–78 [8]		
47. Palladium—Total [4], mg/L; Digestion [4] followed by:						
AA direct aspiration	253.1	3111 B				p. S27 [10]
AA furnace	253.2					p. S28 [10]
DCP	.....					AES0029 [34]
48. Phenols, mg/L:						
Manual distillation [26]	420.1					Note 27
Followed by:						
Colorimetric (4AAP) manual	420.1					Note 27
Automated [19]	420.2					
49. Phosphorus (elemental), mg/L:						
Gas-liquid chromatography	.....					Note 28
50. Phosphorus—Total, mg/L:						
Persulfate digestion followed by	365.2	4500–P B,5			973.55 [3]	
Manual	365.2 or 365.3	4500–P E	D515–88(A)			
Automated ascorbic acid reduction	365.1	4500–P F		I–4600–85	973.56 [3]	
Semi-automated block digestor	365.4		D515–88(B)			
51. Platinum—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	255.1	3111 B				
AA furnace	255.2					
DCP	.....					AES0029 [34]
52. Potassium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	258.1	3111 B		I–3630–85	973.53 [3]	
ICP/AES	[5] 200.7	3120 B				
Flame photometric	.....	3500–K D				
Colorimetric	.....					317 B [17]
53. Residue—Total, mg/L:						
Gravimetric, 103°–105°	160.3	2540 B		I–3750–85		
54. Residue—filterable, mg/L:	160.1					
Gravimetric, 180°	.....	2540 C		I–1750–85		
55. Residue—nonfilterable (TSS), mg/L:						
Gravimetric, 103°–105° post washing of residue.	160.2	2540 D		I–3765–85		
56. Residue—settleable, mg/L:						
Volumetric, (Imhoff cone), or gravimetric.	160.5	2540 F				
57. Residue—Volatile, mg/L:						
Gravimetric, 550°	160.4			I–3753–85		
58. Rhodium—Total [4] mg/L; Digestion [4] followed by:						
AA direct aspiration	265.1	3111 B				
AA furnace	265.2					
59. Ruthenium—Total [4] mg/L; Digestion [4] followed by:						
AA direct aspiration	267.1	3111 B				
AA furnace	267.2					
60. Selenium—Total [4] mg/L; Digestion [4] followed by:						
AA furnace	270.2	3113 B	D3859–93(B)			
ICP/AES [36]	[5] 200.7	3120 B				
AA gaseous hydride	.....	3114 B	D3859–93(A)	I–3667–85		
61. Silica [37]—Dissolved, mg/L; 0.45 micron filtration followed by:						
Colorimetric, manual	370.1	4500–Si D	D859–88	I–1700–85		
Automated (Molybdosilicate)	.....			I–2700–85		
ICP	[5] 200.7	3120 B				
62. Silver—Total [4], mg/L; Digestion [4, 29] followed by:						

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method [1, 35]	Other approved methods				
		Standard methods 18th Ed.[39]	ASTM [39]	USGS [2, 39]	AOAC—Intl.[39]	Other
AA direct aspiration	272.1	3111 B or C		I–3720–85	974.27 [3]	p. 37 [9]
AA furnace	272.2	3113 B				
ICP/AES	[5] 200.7	3120 B				
DCP						AES0029 [34]
63. Sodium-Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	273.1	3111 B		I–3735–85	973.54 [3]	
ICP/AES	[5] 200.7	3120 B				
DCP						AES0029 [34]
Flame photometric		3500 Na D				
64. Specific conductance, micromhos/cm at 25 °C:						
Wheatstone bridge	120.1	2510 B	D1125–91(A)	I–1780–85	973.40 [3]	
65. Sulfate (as SO_4), mg/L:						
Automated colorimetric (barium chloranilate).	375.1					
Gravimetric	375.3	4500–SO_4^{-2}C or D			925.54 [3]	
Turbidimetric	375.4		D516–90			426C [30]
66. Sulfide (as S), mg/L:						
Titrimetric (iodine)	376.1	4500–S^{-2}E		I–3840–85		
Colorimetric (methylene blue)	376.2	4500–S^{-2}D				
67. Sulfite (as SO_3), mg/L:						
Titrimetric (iodine-iodate)		377.1	4500–SO^{3-2}B			
68. Surfactants, mg/L:						
Colorimetric (methylene blue)	425.1	5540 C	D2330–88			
69. Temperature, °C:						
Thermometric	170.1	2550 B				Note 32
70. Thallium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	279.1	3111 B				
AA furnace	279.2					
ICP/AES	[5] 200.7	3120 B				
71. Tin—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	282.1	3111 B		I–3850–78 [8]		
AA furnace	282.2	3113 B				
ICP/AES	[5] 200.7					
72. Titanium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	283.1	3111 D				
AA furnace	283.2					
DCP						AES0029 [34]
73. Turbidity, NTU:						
Nephelometric	180.1	2130 B	D1889–88(A)	I–3860–85		
74. Vanadium—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration	286.1	3111 D				
AA furnace	286.2		D3373–93			
ICP/AES	[5] 200.7	3120 B				
DCP			D4190–82(88)			AES0029 [34]
Colorimetric (Gallic acid)		3500–V D				
75. Zinc—Total,[4] mg/L; Digestion [4] followed by:						
AA direct aspiration [36]	289.1	3111 B or C	D1691–90(A or B)	I–3900–85	974.27 [3]	p. 37 [9]
AA furnace	289.2					
ICP/AES [36]	[5] 200.7	3120 B				
DCP [36]			D4190–82(88)			AES00290 [34]
Colorimetric (Dithizone)		3500-Zn E				
(Zincon)		3500–Zn F				8009 [33]

Table IB notes:

[1] "Methods for Chemical Analysis of Water and Wastes", Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., et al. "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments", U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

[3] "Official Methods of Analysis of the Association of Official Analytical Chemists", methods manual, 15th ed. (1990).

[4] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in ''Methods for Chemical Analysis of Water and Wastes, 1979 and 1983''. One (Section 4.1.3), is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (Section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials may also benefit by this vigorous digestion, however, vigorous digestion with concentrated nitric acid will convert antimony and tin to insoluble oxides and render them unavailable for analysis. Use of ICP/AES as well as determinations for certain elements such as antimony, arsenic, the noble metals, mercury, selenium, silver, tin, and titanium require a modified sample digestion procedure and in all cases the method write-up should be consulted for specific instructions and/or cautions.

NOTE: If the digestion procedure for direct aspiration AA included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion of the filtrate for dissolved metals (or digestion of the original sample solution for total metals) may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses, provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20),
b. is visibly transparent with a turbidity measurement of 1 NTU or less,
c. is colorless with no perceptible odor, and
d. is of one liquid phase and free of particulate or suspended matter following acidification.

[5] The full text of Method 200.7, ''Inductively Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes'', is given at Appendix C of this Part 136.

[6] Manual distillation is not required if comparability data on representative effluent samples are on company file to show that this preliminary distillation step is not necessary: however, manual distillation will be required to resolve any controversies.

[7] Ammonia, Automated Electrode Method, Industrial Method Number 379–75 WE, dated February 19, 1976, Bran & Luebbe (Technicon) Auto Analyzer II, Bran & Luebbe Analyzing Technologies, Inc., Elmsford, N.Y. 10523.

[8] The approved method is that cited in ''Methods for Determination of Inorganic Substances in Water and Fluvial Sediments'', USGS TWRI, Book 5, Chapter A1 (1979).

[9] American National Standard on Photographic Processing Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[10] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency'', Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[11] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[12] Carbonaceous biochemical oxygen demand ($CBOD_5$) must not be confused with the traditional BOD_5 test which measures ''total BOD''. The addition of the nitrification inhibitor is not a procedural option, but must be included to report the $CBOD_5$ parameter. A discharger whose permit requires reporting the traditional BOD_5 may not use a nitrification inhibitor in the procedure for reporting the results. Only when a discharger's permit specifically states $CBOD_5$ is required can the permittee report data using the nitrification inhibitor.

[13] OIC Chemical Oxygen Demand Method, Oceanography International Corporation, 1978, 512 West Loop, P.O. Box 2980, College Station, TX 77840.

[14] Chemical Oxygen Demand, Method 8000, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[15] The back titration method will be used to resolve controversy.

[16] Orion Research Instruction Manual, Residual Chlorine Electrode Model 97–70, 1977, Orion Research Incorporated, 840 Memorial Drive, Cambridge, MA 02138. The calibration graph for the Orion residual chlorine method must be derived using a reagent blank and three standard solutions, containing 0.2, 1.0, and 5.0 mL 0.00281 N potassium iodate/100 mL solution, respectively.

[17] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

[18] National Council of the Paper Industry for Air and Stream Improvement, (Inc.) Technical Bulletin 253, December 1971.

[19] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[20] After the manual distillation is completed, the autoanalyzer manifolds in EPA Methods 335.3 (cyanide) or 420.2 (phenols) are simplified by connecting the re-sample line directly to the sampler. When using the manifold setup shown in Method 335.3, the buffer 6.2 should be replaced with the buffer 7.6 found in Method 335.2.

[21] Hydrogen ion (pH) Automated Electrode Method, Industrial Method Number 378–75WA, October 1976, Bran & Luebbe (Technicon) Autoanalyzer II. Bran & Luebbe Analyzing Technologies, Inc., Elmsford, NY 10523.

[22] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[23] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2–113 and 2–117, Hach Chemical Company, Loveland, CO 80537.

[24] Wershaw, R.L., et al, ''Methods for Analysis of Organic Substances in Water'', Techniques of Water-Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A3, (1972 Revised 1987) p. 14.

[25] Nitrogen, Nitrite, Method 8507, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[26] Just prior to distillation, adjust the sulfuric-acid-preserved sample to pH 4 with 1+9 NaOH.

[27] The approved method is cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition. The colorimetric reaction is conducted at a pH of 10.0±0.2. The approved methods are given on pp. 576–81 of the 14th Edition: Method 510A for distillation, Method 510B for the manual colorimetric procedure, or Method 510C for the manual spectrophotometric procedure.

[28] R.F. Addison and R.G. Ackman, ''Direct Determination of Elemental Phosphorus by Gas-Liquid Chromatography'', Journal of Chromatography, Vol. 47, No. 3, pp. 421–426, 1970.

[29] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

[30] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 15th Edition.

[31] EPA Methods 335.2 and 335.3 require the NaOH absorber solution final concentration to be adjusted to 0.25 N before colorimetric determination of total cyanide.

[32] Stevens, H.H., Ficke, J.F., and Smoot, G.F., ''Water Temperature—Influential Factors, Field Measurement and Data Presentation'', Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 1, Chapter D1, 1975.

[33] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2–231 and 2–333, Hach Chemical Company, Loveland, CO 80537.

[34] ''Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029'', 1986—Revised 1991, Fison Instruments, Inc., 32 Commerce Center, Cherry Hill Drive, Danvers, MA 01923.

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals''.

[36] ''Closed Vessel Microwave Digestion of Wastewater Samples for Determination of Metals'', CEM Corporation, P.O. Box 200, Matthews, NC 28106–0200, April 16, 1992. Available from the CEM Corporation.

[37] When determining boron and silica, only plastic, PTFE, or quartz sampling and laboratory ware may be used from time of collection until completion of analysis.

[38] Only the trichlorofluoromethane extraction solvent is approved.
[39] Methods published by this organization and approved for use under this part may not be modified beyond the modifications expressly allowed and defined in each method.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS

Parameter [1]/methodology	Reference method [27]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
1. Acenaphthene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
2. Acenaphthylene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
3. Acrolein:				
GC/FID	603			
GC/MS	[4] 604			
GC/MS/Isotope	1624			
4. Acrylonitrile:				
GC/FID	603			
GC/MS	[4] 624			
GC/MS/Isotope	1624			
HPLC/UV	610			
5. Anthracene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
6. Benzene:				
GC/PID	602	7220 B		
GC/MS	624			
GC/MS/Isotope	1624			
HPLC/UV	.....			
7. Benzidine:	Note 3,		p. 1.	
GC/MS	[5] 625			
GC/MS/Isotope	1625			
HPLC/ELCD	605			
8. Benzo(a)anthracene:				
GC/FID	610	6440 B		
GC/MS	625	6440 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
9. Benzo(a)pyrene:				
GC/FID	610	6410 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
10. Benzo(b)fluoranthene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
11. Benzo(g, h, i)perylene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
12. Benzo(k)fluoranthene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
13. Benzyl chloride	.....			Note 3, p. 130: Note 6, p. S102.
14. Benzyl butyl phthalate:				
GC/ECD	606			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]/methodology	Reference method [27]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
15. Bis(2-chloroethoxy) methane:				
GC/ELCD	611			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
16. Bis(2-chloroethyl) ether:				
GC/ELCD	611			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
17. Bis (2-ethylhexyl) phthalate:				
GC/ECD	606	6230 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
18. Bromodichloromethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
19. Bromoform:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
20. Bromomethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6410 B		
GC/MS/Isotope	1624			
21. 4-Bromophenylphenyl ether:				
GC/ELCD	611			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
22. Carbon tetrachloride:	Note 3,			p. 130.
GC/ELCD	601	6230 B		
GC/MS	624	6410 B		
GC/MS/Isotope	1624			
23. 4-Chloro-3-methylphenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
24. Chlorobenzene:	Note 3,			p. 130.
GC/ELCD	601	6230 B		
GC/PID	602	6220 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
25. Chloroethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
26. 2-Chloroethylvinyl ether:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
27. Chloroform:				Note, p. 130.
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
28. Chloromethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
29. 2-Chloronaphthalene:				
GC/ECD	612			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
30. 2-Chlorophenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
31. 4-Chlorophenylphenyl ether:				
GC/ELCD	611			
GC/MS	625	6410 B		

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]/methodology	Reference method [27]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
GC/MS/Isotope	1625			
32. Chrysene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
33. Dibenzo(a,h)anthracene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
34. Dibromochloromethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
35. 1,2-Dichlorobenzene:				
GC/ELCD	601	6230 B		
GC/PID	602	6220 B		
GC/ECD	612			
GC/MS	624, 625	6410 B		
GC/MS/Isotope	1625			
36. 1,3-Dichlorobenzene:				
GC/ELCD	601	6230 B		
GC/PID	602	6220 B		
GC/ECD	612			
GC/MS	624, 625	6410 B		
GC/MS/Isotope	1625			
37. 1,4-Dichlorobenzene:				
GC/ELCD	601	6230 B		
GC/PID	602	6220 B		
GC/ECD	612			
GC/MS	624, 625	6410 B		
GC/MS/Isotope	1625			
38. 3,3-Dichlorobenzidine:				
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/ELCD	605			
39. Dichlorodifluoromethane:				
GC/ELCD	601	6230 B		
40. 1,1-Dichloroethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
41. 1,2-Dichloroethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
42. 1,1-Dichloroethene:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
43. trans-1,2-Dichloroethene:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
44. 2,4-Dichlorophenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
45. 1,2-Dichloropropane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
46. cis-1,3-Dichloropropene:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
47. trans-1,3-Dichloropropene:				

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]/methodology	Reference method [27]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
48. Diethyl phthalate:				
GC/ECD	606			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
49. 2,4-Dimethylphenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
50. Dimethyl phthalate:				
GC/ECD	606			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
51. Di-n-butyl phthalate:				
GC/ECD	606			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
52. Di-n-octyl phthalate:				
GC/ECD	606			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
53. 2,3-Dinitrophenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
54. 2,4-Dinitrotoluene:				
GC/ECD	609			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
55. 2,6-Dinitrotoluene				
GC/ECD	609			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
56. Epichlorohydrin	.....			Note 3, p. 130; Note 6, p. S102.
57. Ethylbenzene:				
GC/PID	602	6220 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
58. Fluoranthene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
59. Fluorene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440B	D4657–92	
60. Hexachlorobenzene:				
GC/ECD	612			
GC/MS	625	6410B		
GC/MS/Isotope	1625			
61. Hexachlorobutadiene:				
GC/ECD	612			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
62. Hexachlorocyclopentadiene:				
GC/ECD	612			
GC/MS	[5] 625	6410 B		
GC/MS/Isotope	1625			
63. Hexachloroethane:	.....			616
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
64. Ideno(1,2,3-cd) pyrene:				

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]/methodology	Reference method [27]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
65. Isophorone:				
GC/ECD	609			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
66. Methylene chloride:				Note 3, p. 130
GC/ELCD	601	6230 B		
GC/MS	624			
GC/MS/Isotope	1624			
67. 2-Methyl-4,6-dinitrophenol:				
GC/ECD		6420 B		
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
68. Naphthalene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B		
69. Nitrobenzene:				
GC/ECD	609			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
70. 2-Nitrophenol:				
GC/ECD		6420 B		
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
71. 4-Nitrophenol:				
GC/ECD		6420B		
GC/FID	604	6420B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
72. N-Nitrosodimethylamine:				
GC/NPD	607			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
73. N-Nitrosodi-n-propylamine:				
GC/NPD	607			
GC/MS	[5] 625	6410 B		
GC/MS/Isotope	1625			
74. N-Nitrosodiphenylamine:				
GC/NPD	607			
GC/MS	[5] 625	6410B		
GC/MS/Isotope	1625			
75. 2,2-Oxybis(1-chloropropane):				
GC/ELCD	611			
GC/MS	614	6410 B		
GC/MS/Isotope	1625			
76. PCB–1016:				Note 3, p. 43.
GC/ECD	608			
GC/MS	625	6410 B		
77. PCB–1221:				Note 3, p. 43.
GC/ECD	608			
GC/MS	625	6410 B		
78. PCB–1232:				Note 3, p. 43.
GC/ECD	608			
GC/MS	625	6410 B		
79. PCB–1242:				Note 3, p. 43.
GC/ECD	608			
GC/MS	625	6410 B		
80. PCB–1248:				
GC/ECD	608			
GC/MS	625			
81. PCB–1254:				Note 3, p. 43.

TABLE IC—LIST OF APPROVED TEST PROCEDURES FOR NON-PESTICIDE ORGANIC COMPOUNDS—Continued

Parameter [1]/methodology	Reference method [2 7]	Other approved methods		
		Standard methods 18th Ed.[8]	ASTM [8]	Other
GC/ECD	608			
GC/MS	625	6410 B		
82. PCB–1260:				Note 3, p. 43.
GC/ECD	608	6630 B		
GC/MS	625	6410 B		
83. Pentachlorophenol:				Note 3, p. 140.
GC/ECD		6630 B		
GC/FID	604			
GC/MS	625			
GC/MS/Isotope	1625	6410 B		
84. Phenanthrene:				
GC/FID	610	6440 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
HPLC/UV	610	6440 B	D4657–92	
85. Phenol:				
GC/FID	604	6420 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
86. Pyrene:				
GC/FID	610	6440 B		
GC/MS	625			
GC/MS/Isotope	1625			
HPLC/UV	610	6440B	D4675–92	
87. 2,3,7,8-Tetrachlorodibenzo-p-dioxin:				Note 3, p. 130.
GC/MS	[5a] 613			
88. 1,1,2,2-Tetrachloroethane:				Note 3, p. 130.
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
89. Tetrachloroethene:				Note 3, p. 130.
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
90. Toluene:				
GC/PID	602	6220 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
91. 1,2,4-Trichlorobenzene:				Note 3, p. 130.
GC/ECD	612			
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
92. 1,1,1-Trichloroethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
93. 1,1,2-Trichloroethane:				Note 3, p. 130.
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
94. Trichloroethene:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			
95. Trichlorofluoromethane:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
96. 2,4,6-Trichlorophenol:				
GC/FID	604	6240 B		
GC/MS	625	6410 B		
GC/MS/Isotope	1625			
97. Vinyl chloride:				
GC/ELCD	601	6230 B		
GC/MS	624	6210 B		
GC/MS/Isotope	1624			

Table IC notes:
[1] All parameters are expressed in micrograms per liter (µg/L).

[2] The full text of Methods 601–613, 624, 625, 1624, and 1625, are given at Appendix A, ''Test Procedures for Analysis of Organic Pollutants'', of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B, ''Definition and Procedure for the Determination of the Method Detection Limit'' of this Part 136.

[3] ''Methods for Benzidine: Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater'', U.S. Environmental Protection Agency, September 1978.

[4] Method 624 may be extended to screen samples for Acrolein and Acrylonitrile. However, when they are known to be present, the preferred method for these two compounds is Method 603 or Method 1624.

[5] Method 625 may be extended to include benzidine, hexachlorocyclopentadiene, N-nitrosodimethylamine, and N-nitrosodiphenylamine. However, when they are known to be present, Methods 605, 607, and 612, or Method 1625, are preferred methods for these compounds.

[5a] 625, Screening only.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency'', Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each Analyst must make an initial, one-time demonstration of their ability to generate acceptable precision and accuracy with Methods 601–603, 624, 625, 1624, and 1625 (See Appendix A of this Part 136) in accordance with procedures each in Section 8.2 of each of these Methods. Additionally, each laboratory, on an on-going basis must spike and analyze 10% (5% for Methods 624 and 625 and 100% for methods 1624 and 1625) of all samples to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance.

NOTE: These warning limits are promulgated as an ''interim final action with a request for comments''.

[8] Methods published by this organization and approved for use under this part may not be modified beyond the modifications expressly allowed and defined in each method.

NOTE: The following acronyms are used in this table:

ECD Electron Capture Detector
ELCD Electrolytic Conductivity Detector/Electrochemical Detector
FID Flame Ionization Detector
GC Gas Chromatography
GC/MS Gas Chromatography/Mass Spectrometry
HPLC High Performance Liquid Chromatography
NPD Nitrogen Phosphorous Detector
PID Photoionization Detector
UV Ultraviolet Detector

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]

Parameter/methodology	Method	Reference method [2 7]	Other approved methods		
			Standard methods 18th ed.[8]	ASTM [8]	Other
1. Aldrin	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD	.....		3086–90	
	GC/MS	625	6410 B		
2. Ametryn	GC	.....			Note 3, p. 83; Note 6, p. S68.
3. Aminocarb	TLC	.....			Note 3, p. 94; Note 6, p. S16.
4. Atraton	GC	.....			Note 3, p. 83; Note 6, p. S68.
5. Atrazine	GC	.....			Note 3, p. 83; Note 6, p. S68.
6. Azinphos methyl	GC	.....			Note 3, p. 25; Note 6, p. S51.
7. Barban	TLC	.....			Note 3, p. 104; Note 6, p. S64.
8. α–BHC	GC/ECD	608	6630 B &C	3086–90	Note 3, p. 7.
	GC/ELCD	.....		D3086–90	
	GC/MS	[5] 625	6410 B		
9. β–BHC	GC/ECD	608	6630	3086–90	
	GC/ELCD	.....		D3086–90	
	GC/MS	[5] 625	6410 B		
10. δ–BHC	GC/ECD	608	6630 B & C	D3086–90	
	C/ELCD	.....		D3086–90	
	GC/MS	[5] 625	6410 B		
11. γ–BHC (Lindane)	GC/ECD	608	6630 B & C	3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD	.....		D3086–90	
	GCMS	625	6410 B		
12. Captan	GC/ECD	.....	6630 B	D3086–90	Note 3, p. 7.
	GC/ELCD	.....		D3086–90	
13. Carbaryl	TLC	.....			Note 3, p. 94; Note 6, p. S60.
14. Carbophenothion	GC	.....			Note 4, p. 30; Note 6, p. S73.
15. Chlordane	GC/ECD	608	6630 B & C	3086–90	Note 3, p. 7.
	GC/ELCD	.....		D3086–90	
	GC/MS	625	6410 B		
16. Chloropropham	TLC	.....			Note 3, p. 104; Note 6, p. S64.
17. 2,4–D	GC/ECD	.....	6640 B		Note 3, p. 115; Note 4, p. 35.
18. 4,4′–D–DDD	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD	.....		D3086–90	
	GC/MS	625	6410 B		
19. 4,4′–DDE	GC/ECD	608	6630 B &C	3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD	.....		D3086–90	
	GC/MS	625	6410 B		

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter/methodology	Method	Reference method [2 7]	Other approved methods		
			Standard methods 18th ed.[8]	ASTM [8]	Other
20. 4,4′–DDT	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			D3086–90	
	GC/MS	625	6410 B		
21. Demeton–O	GC				Note 3, p. 25; Note 6, p. S51.
22. Dementon–S	GC				Note 3, p. 25; Note 6, p. S51.
23. Diazinon	GC				Note 3, p. 25; Note 4, p. 30; Note 6, p. S51.
24. Dicamba	GC				Note 3, p. 115.
25. Dichlofenthion	GC				Note 4, p. 30; Note 6, p. S73.
26. Dichloran	GC/ECD		6630 B & C		Note 3, p. 7.
27. Dicofol	GC/ECD			D3086–90	
	GC/ELCD			D3086–90	
28. Dieldrin	GC/ECD	608	6630 B & C		Note 3, p. 7; Note 4, p. 30.
	GC/MS	625	6410 B		
29. Dioxathion	GC				Note 4, p. 30; Note 6, p. S73.
30. Disulfoton	GC				Note 3, p. 25; Note 6, p. S51.
31. Diuron	TLC				Note 3, p. 104; Note 6, p. S64.
32. Endosulfan I	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7.
	GC/ELCD			D3086–90	
	GC/MS	[5] 625	6410 B		
33. Endosulfan II	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7.
	GC/ELCD			D3086–90	
	GC/MS	[5] 625	6410 B		
34. Endosulfan Sulfate	GC	608	6630 C		
	GC/MS	625	6410 B		
35. Endrin	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			D3086–90	
	GC/MS	[5] 625	6410 B		
36. Endrin aldehyde	GC/ECD	608			
37. Ethion	GC				Note 4, p. 30; Note 6, p. S73.
38. Fenuron	TLC				Note 3, p. 104; Note 6, p. S64.
39. Fenuron-TCA	TLC				Note 3, p. 104; Note 6, p. S64.
40. Heptachlor	GC/ECD	608	6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			D3086–90	
	GC/MS	625	6410 B		
41. Heptachlor epoxide	GC/ECD	608	6630 B	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			D3086–90	
	GC/MS	625	6410 B		Note 6, p. S73.
42. Isodrin	GC				Note 4, p. 30; Note 6, p. S73.
43. Linuron	GC				Note 3, p. 104; Note 6, p. S64.
44. Malathion	GC/ECD		6630 C		Note 3, p. 25; Note 4, p. 30; Note 6, p. S51.
45. Methiocarb	TLC				Note 3, p. 94; Note 6, p. S60.
46. Methoxychlor	GC/ECD		6630 B & C	D3086–90	Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			D3086–90	
47. Mexacarbate	TLC				Note 3, p. 94; Note 6, p. S60.
48. Mirex	GC/ECD		6630 B & C		Note 3, p. 7.
49. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
50. Monuron	TLC				Note 3, p. 104; Note 6, p. S64.
51. Nuburon	TLC				Note 3, p. 104; Note 6, p. S64.
52. Parathion methyl	GC/ECD		6630 C		Note 3, p. 25; Note 4, p. 30.
53. Parathion ethyl	GC/ECD		6630 C		Note 3, p. 25.
54. PCNB	GC/ECD		6630 B & C		Note 3, p. 7.
55. Perthane	GC/ECD			D3086–90	
	GC/ELCD			D3086–90	
56. Prometron	GC				Note 3, p. 83; Note 6, p. S68.
57. Prometryn	GC				Note 3, p. 83; Note 6, p. S68.
58. Propazine	GC				Note 3, p. 83; Note 6, p. S68.
59. Propham	TLC				Note 3, p.104; Note 6, p. S64
60. Propoxur	TLC				Note 3, p. 94; Note 6, p. S60.
61. Secbumeton	TLC				Note 3, p. 83; Note 6, p. S68.
62. Siduron	TLC				Note 3, p. 104; Note 6, p. S64.
63. Simazine	GC				Note 3, p. 83; Note 6, p. S68.
64. Strobane	GC/ECD		6630 B & C		Note 3, p. 7.
65. Swep	TLC				Note 3, p. 104; Note 6, p. S64.
66. 2,4,5-T	GC/ECD		6640 B		Note 3, p. 115; Note 4, p. 35.
67. 2,4,5-TP (Silvex)	GC/ECD		6640 B		Note 3, p. 115.
68. Terbuthylazine	GC				Note 3, p. 83; Note 6, p. S68.
69. Toxaphene	GC/ECD	608	6630 B & C		Note 3, p. 7; Note 4, p. 30.
	GC/ELCD			3086–90	

TABLE ID.—LIST OF APPROVED TEST PROCEDURES FOR PESTICIDES [1]—Continued

Parameter/methodology	Method	Reference method [2 7]	Other approved methods		
			Standard methods 18th ed.[8]	ASTM [8]	Other
70. Trifluralin	GC/MS GC	625	6410 B 6630 B	D3086–90	Note 3, p. 7.

Table ID notes:

[1] Pesticides are listed in this table by common name for the convenience of the reader. Additional pesticides may be found under Table 1C, where entries are listed by chemical name.

[2] The full text of Methods 608 and 625 are given at Appendix A. ''Test Procedures for Analysis of Organic Pollutants'' of this Part 136. The standardized test procedure to be used to determine the method detection limit (MDL) for these test procedures is given at Appendix B. ''Definition and Procedure for the Determination of the Method Detection Limit'', of this Part 136.

[3] Methods for Benzidine, Chlorinated Organic Compounds, Pentachlorophenol and Pesticides in Water and Wastewater'' U.S. Environmental Protection Agency, September 1978. This EPA publication includes thin-layer chromatography (TLC) methods.

[4] ''Methods for Analysis of Organic Substances in Water and Fluvial Sediments'', Techniques of Water-Resources Investigations of the U.S. Geological Survey, Book 5, Chapter A3 (1987).

[5] The method may be extended to include α-BHC, γ-BHC, endosulfan I, endosulfan II, and endrin. However, when they are known to exist, Method 608 is the preferred method.

[6] ''Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency''. Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[7] Each analyst must make an initial, one-time, demonstration of their ability to generate acceptable precision and accuracy with Methods 608 and 625 (See Appendix A of this Part 136) in accordance with procedures given in Section 8.2 of each of these methods. Additionally, each laboratory, on an on-going basis, must spike and analyze 10% of all samples analyzed with Method 608 or 5% of all samples analyzed with Method 625 to monitor and evaluate laboratory data quality in accordance with Sections 8.3 and 8.4 of these methods. When the recovery of any parameter falls outside the warning limits, the analytical results for that parameter in the unspiked sample are suspect and cannot be reported to demonstrate regulatory compliance. These quality control requirements also apply to the Standard Methods, ASTM Methods, and other Methods cited.

Note: These warning limits are promulgated as an ''Interim final action with a request for comments.''

[8] Methods published by this organization and approved for use under this part may not be modified beyond the modifications expressly allowed and defined in each method.

Note: The following acronyms are used in this table:

ECD: Electron Capture Detector.
ELCD: Electrolytic Conductivity Detector/Electrochemical Detector.
FID: Flame Ionization Detector.
GC: Gas Chromatography.
GC/MS: Gas Chromatography/Mass Spectrometry.

* * * * *

BILLING CODE 6560–50–P

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs									
										IPR			OPR		MS/MSD				
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery			ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
1.	Acidity (CaCO3)	305.1	---	1.00	Multi	MCAWW	2	---	---	---	---	3.6	---	---	---	---	3.6		10 mg/L	Range
2.	Alkalinity "	310.1	---	2.00	Multi	"	2	---	---	---	---	7.2	---	---	---	---	7.2		10 mg/L	310.2
	"	310.2	99.50	0.50	Single	"	2	---	100 mg/L	97.0	102.0	1.8	97.0	102.0	97.0	102.0	1.8		10 mg/L	Range
3..	Aluminum - Flame	202.1	99.13	31.60	Multi	Apx D	5	25 %	100 ug/L	35.0	163.0	64.0	29.0	169.0	29.0	169.0	64.0		300 ug/L	3.18 x DL
	" - Furnace	202.2	103.69	42.74	Multi	Apx D	5	25 %	100 ug/L	18.0	190.0	86.0	9.0	198.0	9.0	198.0	86.0		20 ug/L	Range
	" - ICP	200.7	96.33	24.19	Multi	Apx C	5	25 %	100 ug/L	47.0	145.0	49.0	43.0	150.0	43.0	150.0	49.0	20 ug/L	50 ug/L	3.18 x MDL
	" - DCP	---																		
	" - Color	---																		
4.	Ammonia - distill																			
	" - Nessler	350.2	100.46	14.27	Multi	MCAWW	3	10 %	2.0 mg/L	71.0	129.0	29.0	69.0	132.0	69.0	132.0	29.0		50 ug/L	Range
	" - Titr	350.2	100.46	14.27	Multi	MCAWW	3	10 %	2.0 mg/L	71.0	129.0	29.0	69.0	132.0	69.0	132.0	29.0		1.0 mg/L	Range
	" - ISE	350.3	91.00	2.31	Single	MCAWW	3	10 %	130 ug/L	82.0	100.0	8.4	81.0	101.0	81.0	101.0	8.4		30 ug/L	Range
	" - Phenate	350.1	103.00	1.16	Single	MCAWW	1	---	0.5 mg/L	98.0	108.0	4.2	98.0	108.0	98.0	108.0	4.2		10 ug/L	Range
	" - Auto elec	---																		
5.	Antimony - Flame	204.1	96.50	1.13	Single	MCAWW	1	---	10 mg/L	92.0	101.0	4.1	91.0	102.0	91.0	102.0	4.1		1.0 mg/L	Range
	Antimony - Furnace	204.2	71.20	38.17	Multi	Apx D	5	25 %	100 ug/L	d	148.0	77.0	d	156.0	d	156.0	77.0		20 ug/L	Range
	Antimony - ICP	200.7	76.00	15.44	Multi	Apx C	3	10 %	500 ug/L	45.0	107.0	31.0	42.0	110.0	42.0	110.0	31.0	8 ug/L	20 ug/L	3.18 x MDL
6.	Arsenic	206.5	Digestion - no specs																	
	" - Hydride	206.3	98.38	8.19	Single	3114 B	3	10 %	200 ug/L	68.0	128.0	30.0	65.0	132.0	65.0	132.0	30.0		2.0 ug/L	Range
	" - Furnace	206.2	98.63	15.98	Multi	Apx D	3	10 %	100 ug/L	66.0	131.0	32.0	63.0	134.0	63.0	134.0	32.0		5.0 ug/L	Range
	" - ICP	200.7	92.17	14.79	Multi	Apx C	3	10 %	100 ug/L	62.0	122.0	30.0	59.0	125.0	59.0	125.0	30.0	8 ug/L	20 ug/L	3.18 x MDL
	" - Color (SDDC)	206.4	100.00	13.80	Multi	MCAWW	3	10 %	40 ug/L	72.0	128.0	28.0	69.0	131.0	69.0	131.0	28.0		10 ug/L	Method
7.	Barium - Flame	208.1	103.50	8.63	Single	MCAWW	3	10 %	1 mg/L	72.0	135.0	32.0	69.0	138.0	69.0	138.0	32.0		1.0 mg/L	Range
	" - Furnace	208.2	142.14	31.10	Multi	Apx D	5	25 %	100 ug/L	79.0	205.0	63.0	73.0	211.0	73.0	211.0	63.0		10 ug/L	Range
	" - ICP	200.7	77.30	20.97	Multi	Apx C	3	10 %	100 ug/L	35.0	120.0	42.0	31.0	124.0	31.0	124.0	42.0	1 ug/L	2 ug/L	3.18 x MDL
	" - DCP	---																		
8.	Beryllium - Flame	210.1	98.33	4.27	Single	MCAWW	3	10 %	50 ug/L	82.0	114.0	16.0	81.0	116.0	81.0	116.0	16.0		50 ug/L	Range
	" - Furnace	210.2	106.66	21.76	Multi	Apx D	5	25 %	100 ug/L	63.0	151.0	44.0	58.0	155.0	58.0	155.0	44.0		1.0 mg/L	Range
	" - ICP	200.7	96.34	2.31	Multi	Apx C	3	10 %	100 ug/L	91.0	101.0	4.7	91.0	102.0	91.0	102.0	4.7	0.3 ug/L	1.0 ug/L	3.18 x MDL
	" - DCP	---																		
	" - Color	---																		
9.	BOD	405.1		24.10	Multi	MCAWW	---	---	100 mg/L			49.0					49.0		N/A	
10.	Boron - Color	212.3	100.00	22.80	Multi	MCAWW	5	25 %	240 ug/L	54.0	146.0	46.0	49.0	151.0	49.0	151.0	46.0		100 ug/L	Range

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs										
										IPR			OPR		MS/MSD					
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery				ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
	* - ICP	200.7	97.07	25.60	Multi	Apx C	5	25 %	100 ug/L	45.0	149.0	52.0	40.0	154.0	40.0	154.0	52.0	3 ug/L	10 ug/L	3.18 x MDL
	* - DCP	---																		
11.	Bromide	320.1	93.75	7.17	Single	MCAWW	3	10 %	5 mg/L	67.0	120.0	26.0	65.0	123.0	65.0	123.0	26.0		2 mg/L	Range
12.	Cadmium - Flame	213.1	94.87	15.88	Multi	Apx D	3	10 %	100 ug/L	63.0	127.0	32.0	59.0	130.0	59.0	130.0	32.0		50 ug/L	Range
	Cadmium - Furnace	213.2	98.43	23.05	Multi	Apx D	5	25 %	100 ug/L	52.0	145.0	47.0	47.0	150.0	47.0	150.0	47.0		0.5 ug/L	Range
	Cadmium - ICP	200.7	98.56	7.59	Multi	Apx C	3	10 %	100 ug/L	83.0	114.0	16.0	81.0	116.0	81.0	116.0	16.0	1 ug/L	2 ug/L	3.18 x MDL
	Cadmium - DCP	---																		
	Cadmium - Volt	---																		
	Cadmium - Color	---																		
13.	Calcium - Flame	215.1	99.00	3.33	Single	MCAWW	3	10 %	10 ug/L	87.0	111.0	12.0	85.0	113.0	85.0	113.0	12.0		200 ug/L	Range
	Calcium - ICP	200.7	89.22	22.38	Multi	Apx C	5	25 %	100 ug/L	44.0	134.0	45.0	39.0	139.0	39.0	139.0	45.0	10 ug/L	20 ug/L	3.18 x MDL
	Calcium - DCP	---																		
	Calcium - Titr	215.2	98.10	9.20	Single	MCAWW	3	10 %	100 ug/L	64.0	132.0	34.0	61.0	135.0	61.0	135.0	34.0		2 mg/L	3.18 x LDL
14.	CBOD5	---																		
15.	COD - Titr	410.1	95.30	17.76	Multi	MCAWW	3	10 %	250 mg/L	59.0	131.0	36.0	56.0	135.0	56.0	135.0	36.0		50 mg/L	Method
	COD - Titr	410.2	100.30	4.15	Multi	MCAWW	3	10 %	10 mg/L	92.0	109.0	8.3	91.0	110.0	91.0	110.0	8.3		5 mg/L	Range
	COD - Titr	410.3	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0			
	COD - Spectro	410.4	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0			
16.	Chloride - Titr/Ag	---																		
	Chloride - Titr/Hg	325.3	97.10	3.30	Multi	MCAWW	3	10 %	250 mg/L	90.0	104.0	6.6	89.0	105.0	89.0	105.0	6.6		---	
	Chloride - Color	---																		
	Chloride - Auto	325.1	100.50	3.00	Single	MCAWW	3	10 %	10 mg/L	89.0	112.0	11.0	88.0	113.0	88.0	113.0	11.0		1 mg/L	Range
	Chloride - Auto	325.2	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 mg/L	Range
17.	Chlorine - Ampere	330.1	91.20	12.50	Multi	MCAWW	3	10 %	250 mg/L	66.0	117.0	25.0	63.0	119.0	63.0	119.0	25.0		---	
	Chlorine - Iodo	330.3	81.50	32.40	Multi	MCAWW	5	25 %	1.0 mg/L	16.0	147.0	65.0	10.0	153.0	10.0	153.0	65.0		0.1 mg/L	Method
	Chlorine - Back titr	330.2	98.80	4.30	Single	MCAWW	3	10 %	1.0 mg/L	83.0	115.0	16.0	81.0	116.0	81.0	116.0	16.0		---	
	Chlorine - DPD-FAS	330.4	91.90	19.20	Multi	MCAWW	3	10 %	1.0 mg/L	53.0	131.0	39.0	49.0	135.0	49.0	135.0	39.0		0.1 mg/L	Method
	Chlorine - Spectro	330.5	84.40	27.60	Multi	MCAWW	5	25 %	1.0 mg/L	29.0	140.0	56.0	23.0	146.0	23.0	146.0	56.0		0.2 mg/L	Method
	Chlorine - Electrode	---																		
18.	Chromium VI - AA	218.4	98.49	6.96	Multi	MCAWW	3	10 %	100 ug/L	84.0	113.0	14.0	83.0	114.0	83.0	114.0	14.0		10 ug/L	Range
	Chromium VI - Color	---																		
19.	Chromium - Flame	218.1	101.54	17.36	Multi	Apx D	3	10 %	100 ug/L	66.0	137.0	35.0	63.0	140.0	63.0	140.0	35.0		250 ug/L	Method
	Chromium - Chelate	218.3	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 ug/L	Method

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs										
										IPR			OPR		MS/MSD					
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery				ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
	Chromium - Furnace	218.2	91.43	17.69	Multi	Apx D	3	10 %	100 ug/L	56.0	127.0	36.0	52.0	131.0	52.0	131.0	36.0		5 ug/L	Range
	Chromium - ICP	200.7	98.54	9.39	Multi	Apx C	3	10 %	100 ug/L	79.0	118.0	19.0	77.0	120.0	77.0	120.0	19.0	4 ug/L	10 ug/L	3.18 x MDL
	Chromium - DCP	---																		
	Chromium - Color	---																		
20.	Cobalt - Flame	219.1	98.00	1.00	Single	MCAWW	3	10 %	1.0 mg/L	94.0	102.0	3.6	94.0	102.0	94.0	102.0	3.6		500 ug/L	Range
	Cobalt - Furnace	219.2	89.38	22.27	Multi	Apx D	5	25 %	100 ug/L	44.0	134.0	45.0	40.0	139.0	40.0	139.0	45.0		5 ug/L	Range
	Cobalt - ICP	200.7	87.59	8.16	Multi	Apx C	3	10 %	100 ug/L	71.0	104.0	17.0	69.0	106.0	69.0	106.0	17.0	2 ug/L	5 ug/L	3.18 x MDL
	Cobalt - DCP	---																		
21.	Color - ADMI	110.1	100.00	10.00	No data	Default	1	---	100 C.U.	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		25 C.U.	Range
	Color - Pt/Co	110.2	100.00	10.00	No data	Default	3	---	100 C.U.	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		---	No data
	Color - Spectro	110.3	100.00	10.00	No data	Default	3	---	100 C.U.	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0			
22.	Copper - Flame	220.1	99.79	17.00	Multi	MCAWW	3	10 %	100 ug/L	65.0	134.0	34.0	62.0	138.0	62.0	138.0	34.0		100 ug/L	Method
	Copper - Furnace	220.2	92.54	27.29	Multi	Apx D	5	25 %	100 ug/L	37.0	148.0	55.0	32.0	153.0	32.0	153.0	55.0		5 ug/L	Range
	Copper - ICP	200.7	95.82	7.07	Multi	Apx C	3	10 %	100 ug/L	81.0	110.0	15.0	80.0	112.0	80.0	112.0	15.0	3 ug/L	10 ug/L	3.18 x MDL
	Copper - DCP	---																		
	Copper - Color/Neo	---																		
	Copper - Color/Bicin	---																		
23.	Cyanide - Distill	---																		
	Cyanide - Titr	---																		
	Cyanide - Spectro	335.2	85.00	11.07	Single	MCAWW	3	10 %	250 ug/L	45.0	125.0	40.0	40.0	130.0	40.0	130.0	40.0		60 ug/L	Data
	Cyanide - Auto	335.3	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		5 ug/L	Range
24.	CATC - Titr	335.1	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0			
	CATC - Spectro	335.1	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0			
25.	Fluoride - Distill	---																		
	Fluoride - Elec/man	340.2	98.82	3.53	Multi	MCAWW	3	10 %	1.0 mg/L	91.0	106.0	7.1	91.0	107.0	91.0	107.0	7.1		100 ug/L	Range
	Fluoride - Elec/auto	---																		
	Fluoride - SPADNS	340.1	97.59	10.72	Multi	MCAWW	3	10 %	1.0 mg/L	76.0	120.0	22.0	74.0	122.0	74.0	122.0	22.0		100 ug/L	Range
	Fluoride - Auto	340.3	89.00	12.00	Single	MCAWW	3	10 %	150 ug/L	45.0	133.0	44.0	41.0	137.0	41.0	137.0	44.0		50 ug/L	Range
26.	Gold - Flame	231.1	100.00	10.00	No data	Default	3	10 %	1.0 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		500 ug/L	Range
	Gold - Furnace	231.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		5 ug/L	Range
	Gold - DCP	---																		
27.	Hardness - Color/auto	130.1	89.00	7.89	Single	MCAWW	3	10 %	50 mg/L	60.0	118.0	29.0	57.0	121.0	57.0	121.0	29.0		10 mg/L	Range
	Hardness - Titr/EDTA	130.2	99.13	9.26	Multi	MCAWW	3	10 %	30 mg/L	80.0	118.0	19.0	78.0	120.0	78.0	120.0	19.0		50 mg/L	Data

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs									
										IPR			OPR		MS/MSD				
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery			ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
28.	pH - Electrode	150.1	N/A	1.30	Multi	MCAWW	2	---	N/A			2.6					2.6		N/A	
	pH - Auto	---																		
29.	Iridium - Flame	235.1	100.00	10.00	No data	Default	3	10 %	100 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		20 mg/L	Range
	Iridium - Furnace	235.2	100.00	10.00	No data	Default	3	10 %	200 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		100 ug/L	Range
30.	Iron - Flame	236.1	97.69	17.00	Multi	Apx D	3	10 %	100 ug/L	63.0	132.0	34.0	60.0	136.0	60.0	136.0	34.0		300 ug/L	Range
	Iron - Furnace	236.2	144.71	36.03	Multi	Apx D	5	25 %	100 ug/L	72.0	217.0	73.0	65.0	224.0	65.0	224.0	73.0		5 ug/L	Range
	Iron - ICP	200.7	95.29	18.33	Multi	Apx C	3	10 %	100 ug/L	58.0	132.0	37.0	54.0	136.0	54.0	136.0	37.0	30 ug/L	100 ug/L	3.18 x MDL
	Iron - DCP	---																		
	Iron - Color	---																		
31.	TKN - Digest	351.3	101.03	25.76	Multi	MCAWW	5	25 %	2 mg/L	49.0	153.0	52.0	44.0	158.0	44.0	158.0	52.0		50 ug/L	Range
	TKN - Titr	351.3	101.03	25.76	Multi	MCAWW	5	25 %	2 mg/L	49.0	153.0	52.0	44.0	158.0	44.0	158.0	52.0		50 ug/L	Range
	TKN - Nessler	351.3	101.03	25.76	Multi	MCAWW	5	25 %	2 mg/L	49.0	153.0	52.0	44.0	158.0	44.0	158.0	52.0		50 ug/L	Range
	TKN - Electrode	351.3	101.03	25.76	Multi	MCAWW	5	25 %	2 mg/L	49.0	153.0	52.0	44.0	158.0	44.0	158.0	52.0		50 ug/L	Range
	TKN - Phenate	351.1	71.70	27.98	Multi	MCAWW	5	25 %	2 mg/L	15.0	128.0	56.0	10.0	134.0	10.0	134.0	56.0		50 ug/L	Range
	TKN - Block/color	351.2	99.00	8.82	Single	MCAWW	3	10 %	2 mg/L	67.0	131.0	32.0	63.0	135.0	63.0	135.0	32.0		100 ug/L	Range
	TKN - Potentio	351.4	100.00	10.00	No data	Default	3	10 %	10 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		30 ug/L	Range
32.	Lead - Flame	239.1	109.90	36.70	Multi	Apx D	5	25 %	100 ug/L	36.0	184.0	74.0	29.0	191.0	29.0	191.0	74.0		40 ug/L	Data
	Lead - Furnace	239.2	93.80	22.75	Multi	Apx D	5	25 %	100 ug/L	48.0	140.0	46.0	43.0	144.0	43.0	144.0	46.0		5 ug/L	Range
	Lead - ICP	200.7	94.79	12.58	Multi	Apx C	3	10 %	100 ug/L	69.0	120.0	26.0	67.0	123.0	67.0	123.0	26.0	10 ug/L	20 ug/L	3.18 x MDL
	Lead - DCP	---																		
	Lead - Volt	---																		
	Lead - Color	---																		
33.	Magnesium - Flame	242.1	97.90	29.81	Multi	MCAWW	5	25 %	100 ug/L	38.0	158.0	60.0	32.0	164.0	32.0	164.0	60.0		20 ug/L	Range
	Magnesium - ICP	200.7	97.71	17.67	Multi	Apx C	3	10 %	100 ug/L	62.0	134.0	36.0	58.0	137.0	58.0	137.0	36.0	20 ug/L	50 ug/L	3.18 x MDL
	Magnesium - DCP	---																		
	Magnesium - Grav	---																		
34.	Manganese - Flame	243.1	95.43	13.15	Multi	Apx D	3	25 %	100 ug/L	69.0	122.0	27.0	66.0	125.0	66.0	125.0	27.0		100 ug/L	Range
	Manganese - Furnace	243.2	106.20	21.05	Multi	Apx D	5	25 %	100 ug/L	64.0	149.0	43.0	59.0	153.0	59.0	153.0	43.0		1 ug/L	Range
	Manganese - ICP	200.7	94.30	4.12	Multi	Apx C	3	10 %	100 ug/L	86.0	103.0	8.3	85.0	104.0	85.0	104.0	8.3	1 ug/L	2 ug/L	3.18 x MDL
	Manganese - DCP	---																		
	Manganese - Persulf	---																		
	Manganese - Periodа	---																		
35.	Mercury - CV/Man	245.1	92.90	29.40	Multi	MCAWW	5	25 %	4 ug/L	34.0	152.0	59.0	28.0	158.0	28.0	158.0	59.0		0.2 ug/L	DL

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs										
										IPR			OPR		MS/MSD					
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery				ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
	Mercury - CV/Auto	245.2	102.00	2.00	Single	MCAWW	3	10 %	10 ug/L	94.0	110.0	7.2	94.0	110.0	94.0	110.0	7.2		0.2 ug/L	DL
36.	Molybdenum - Flame	246.1	97.00	2.33	Single	MCAWW	3	10 %	300 ug/L	88.0	106.0	8.4	87.0	107.0	87.0	107.0	8.4		300 ug/L	Data
	Molybdenum - Furnace	246.2	100.00	10.00	No data	Default	3	10 %	10 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		3 ug/L	Range
	Molybdenum - ICP	200.7	96.92	7.78	Multi	Apx C	3	10 %	100 ug/L	81.0	113.0	16.0	79.0	115.0	79.0	115.0	16.0	4 ug/L	10 ug/L	3.18 x MDL
	Molybdenum - DCP	---																		
37.	Nickel - Flame	249.1	96.67	2.00	Single	MCAWW	3	10 %	1 ug/L	89.0	104.0	7.2	88.0	105.0	88.0	105.0	7.2		0.2 ug/L	Data
	Nickel - Furnace	249.2	90.37	26.65	Multi	Apx D	5	25 %	100 ug/L	37.0	144.0	54.0	31.0	149.0	31.0	149.0	54.0		5 ug/L	Range
	Nickel - ICP	200.7	95.48	10.44	Multi	Apx C	3	10 %	100 ug/L	74.0	117.0	21.0	72.0	119.0	72.0	119.0	21.0	5 ug/L	20 ug/L	3.18 x MDL
	Nickel - DCP	---																		
	Nickel - Color	---																		
38.	Nitrate	352.1	104.12	22.69	Multi	MCAWW	5	25 %	1 mg/L	58.0	150.0	46.0	54.0	155.0	54.0	155.0	46.0		0.1 mg/L	Range
39.	NO2-NO3 - Cd/Man	353.3	100.00	12.50	Single	MCAWW	3	10 %	40 ug/L	55.0	145.0	45.0	50.0	150.0	50.0	150.0	45.0		10 ug/L	Range
	NO2-NO3 - Cd/Auto	353.2	105.75	4.14	Single	MCAWW	3	10 %	290 ug/L	90.0	121.0	15.0	89.0	123.0	89.0	123.0	15.0		50 ug/L	Range
	NO2-NO3 - Cd/Hydra	353.1	99.00	5.13	Single	MCAWW	3	10 %	400 ug/L	80.0	118.0	19.0	78.0	120.0	78.0	120.0	19.0		10 ug/L	Range
40.	Nitrite - Spec/Man	354.1	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		10 ug/L	Range
	Nitrite - Spec/Auto	---																		
41.	Oil & Grease	413.1	93.00	6.43	Single	MCAWW	1	10 %	15 mg/L	69.0	117.0	24.0	67.0	119.0	67.0	119.0	24.0		5 mg/L	Range
42.	TOC	415.1	101.01	7.78	Multi	MCAWW	3	10 %	100 mg/L	85.0	117.0	16.0	83.0	119.0	83.0	119.0	16.0		1 mg/L	Method
43.	Organic nitrogen	---																		
44.	O-phosphate - Auto	365.1	87.20	22.00	Multi	MCAWW	5	25 %	300 ug/L	43.0	132.0	45.0	38.0	136.0	38.0	136.0	45.0		10 ug/L	Range
	O-phosphate - Man 1	365.2	97.25	5.37	Multi	MCAWW	3	10 %	300 ug/L	86.0	108.0	11.0	85.0	110.0	85.0	110.0	11.0		10 ug/L	Range
	O-phosphate - Man 2	365.3	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		10 ug/L	Range
45.	Osmium - Flame	252.1	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 mg/L	Method
	Osmium - Furnace	252.2	100.00	10.00	No data	Default	3	10 %	10 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		50 ug/L	Range
46.	DO - Winkler	360.2	100.00	1.00	Single	MCAWW	3	10 %	1 mg/L	96.0	104.0	3.6	96.0	104.0	96.0	104.0	3.6		50 ug/L	Range
	DO - Electrode	360.1	100.00	1.00	Single	MCAWW	3	10 %	1 mg/L	96.0	104.0	3.6	96.0	104.0	96.0	104.0	3.6		50 ug/L	Range
47.	Palladium - Flame	253.1	100.00	10.00	No data	Default	3	10 %	1 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		500 ug/L	Range
	Palladium - Furnace	253.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		20 ug/L	Range
	Palladium - DCP	---																		
48.	Phenol - Color/Man	420.1	100.00	10.31	Multi	MCAWW	3	10 %	300 ug/L	79.0	121.0	21.0	77.0	123.0	77.0	123.0	21.0		5 ug/L	Method
	Phenol - Color/Auto	420.2	98.00	1.12	Single	MCAWW	3	10 %	1 mg/L	93.0	103.0	4.1	93.0	103.0	93.0	103.0	4.1		2 ug/L	Range
49.	Phosphorus - GC	---																		
50.	Phosphorus - Asc/Man	365.2	103.09	30.00	Multi	MCAWW	5	25 %	300 ug/L	43.0	164.0	60.0	37.0	170.0	37.0	170.0	60.0		10 ug/L	Range

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs										
										IPR			OPR		MS/MSD					
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery				ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
	Phosphorus - Asc/Man	365.3	99.00	22.00	Multi	MCAWW	5	25 %	300 ug/L	55.0	143.0	44.0	50.0	148.0	50.0	148.0	44.0		10 ug/L	Range
	Phosphorus - Asc/Auto	365.1	87.20	22.00	Multi	MCAWW	5	25 %	300 ug/L	43.0	132.0	45.0	38.0	136.0	38.0	136.0	45.0		10 ug/L	Range
	Phosphorus - Block	365.4	98.00	3.00	Single	MCAWW	3	10 %	2 mg/L	87.0	109.0	11.0	86.0	110.0	86.0	110.0	11.0		10 ug/L	Range
51.	Platinum - Flame	255.1	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		5 mg/L	Range
	Platinum - Furnace	255.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		100 ug/L	Range
	Platinum - DCP	---																		
52.	Potassium - Flame	258.1	103.00	12.50	Single	MCAWW	3	10 %	2 mg/L	58.0	148.0	45.0	53.0	153.0	53.0	153.0	45.0		100 ug/L	Range
	Potassium - ICP	200.7	83.05	17.12	Multi	Apx C	3	10 %	1 mg/L	48.0	118.0	35.0	45.0	121.0	45.0	121.0	35.0	300 ug/L	1 mg/L	3.18 x MDL
	Potassium - FPD	---																		
	Potassium - Color	---																		
53.	Total Solids	160.3	100.00	10.00	No data	Default	1	---	100 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		10 mg/L	Range
54.	TDS	160.1	100.00	10.00	No data	Default	1	---	100 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		10 mg/L	Range
55.	TSS	160.2	100.00	10.00	No data	Default	1	---	100 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		4 mg/L	Range
56.	Settleable Solids	160.5	100.00	10.00	No data	Default	1	---	100 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		0.2 mL/L/h	Method
57.	Volatile Residue	160.4	100.00	6.47	Multi	MCAWW	3	10 %	300 ug/L	87.0	113.0	13.0	85.0	115.0	85.0	115.0	13.0		10 mg/L	Range
58.	Rhodium - Flame	265.1	100.00	10.00	No data	Default	3	10 %	1 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 mg/L	Range
	Rhodium - Furnace	265.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		20 ug/L	Range
59.	Ruthenium - Flame	267.1	100.00	10.00	No data	Default	3	10 %	1 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 mg/L	Range
	Ruthenium - Furnace	267.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		100 ug/L	Range
60.	Selenium - Furnace	270.2	96.12	16.72	Multi	Apx D	3	10 %	100 ug/L	62.0	130.0	34.0	59.0	133.0	59.0	133.0	34.0		5 ug/L	Range
	Selenium - ICP	200.7	91.13	26.35	Multi	Apx C	5	25 %	1 mg/L	38.0	144.0	53.0	33.0	150.0	33.0	150.0	53.0	20 ug/L	50 ug/L	3.18 x MDL
	Selenium - Hydride	---																		
61.	Silica - Color/Man	370.1	85.70	7.80	Multi	MCAWW	3	10 %	5 mg/L	70.0	102.0	16.0	68.0	103.0	68.0	103.0	16.0		2 mg/L	Range
	Silica - Color/Auto	---																		
	Silica - ICP	200.7	53.86	45.38	Multi	Apx C	5	25 %	1 mg/L	d	145.0	91.0	d	154.0	d	154.0	91.0	20 ug/L	50 ug/L	3.18 x MDL
62.	Silver - Flame	272.1	89.40	17.60	Multi	MCAWW	3	10 %	50 ug/L	54.0	125.0	36.0	50.0	129.0	50.0	129.0	36.0		100 ug/L	Range
	Silver - Furnace	272.2	94.88	18.20	Multi	Apx D	3	10 %	100 ug/L	58.0	132.0	37.0	54.0	135.0	54.0	135.0	37.0		1 ug/L	Range
	Silver - ICP	200.7	49.73	47.50	Multi	Apx C	5	25 %	100 ug/L	d	145.0	95.0	d	155.0	d	155.0	95.0	2 ug/L	5 ug/L	3.18 x MDL
	Silver - DCP	---																		
63.	Sodium - Flame	273.1	100.00	1.54	Multi	MCAWW	3	10 %	5 mg/L	96.0	104.0	3.1	96.0	104.0	96.0	104.0	3.1		30 ug/L	Range
	Sodium - ICP	200.7	99.77	24.27	Multi	Apx C	5	25 %	1 mg/L	51.0	149.0	49.0	46.0	154.0	46.0	154.0	49.0	30 ug/L	100 ug/L	3.18 x MDL
	Sodium - DCP	---																		
	Sodium - FPD	---																		

Table IF- Standardized QC and QC Acceptance Criteria for Methods in 40 CFR Part 136, Table IB

		Data								Specs										
										IPR			OPR		MS/MSD					
		Reference		Prec-					Spike	Recovery		Prec-	Recovery		Recovery				ML	ML
No.	Analyte	Method	Recovery	ision	Labs	Source	CAL points	CAL lin	conc	Low	High	ision	Low	High	Low	High	RPD	MDL	Value	Calc
64.	Specific conductance	120.1	97.98	7.55	Multi	MCAWW	3	10 %	5 mg/L	82.0	114.0	16.0	81.0	115.0	81.0	115.0	16.0		No data	
65.	Sulfate - Color/Auto	375.1	99.00	1.80	Single	MCAWW	3	10 %	100 mg/L	92.0	106.0	6.5	91.0	107.0	91.0	107.0	6.5		10 mg/L	Range
	Sulfate - Grav	375.3	102.00	1.45	Single	MCAWW	3	10 %	100 mg/L	96.0	108.0	5.3	96.0	108.0	96.0	108.0	5.3		10 ug/L	Range
	Sulfate - Turbid	375.4	96.99	7.15	Multi	MCAWW	3	10 %	100 mg/L	82.0	112.0	15.0	81.0	113.0	81.0	113.0	15.0		1 mg/L	DL
66.	Sulfide - Turbid	376.1	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 mg/L	DL
	Sulfide - Color	376.2	100.00	10.00	No data	MCAWW	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		No data	
67.	Sulfite - Turbid	377.1	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		3 mg/L	DL
68.	Surfactants	425.1	101.36	9.13	Multi	MCAWW	3	10 %	3 mg/L	83.0	120.0	19.0	81.0	122.0	81.0	122.0	19.0		25 ug/L	Range
69.	Temperature	170.1	---	---															N/A	
70.	Thallium - Flame	279.1	100.00	3.00	Single	MCAWW	3	10 %	600 ug/L	89.0	111.0	11.0	88.0	112.0	88.0	112.0	11.0		600 ug/L	Data
	Thallium - Furnace	279.2	87.10	11.79	Multi	Apx D	5	25 %	100 ug/L	63.0	111.0	24.0	61.0	114.0	61.0	114.0	24.0		5 ug/L	Range
	Thallium - ICP	200.7	82.90	28.34	Multi	Apx C	5	25 %	1 mg/L	26.0	140.0	57.0	20.0	146.0	20.0	146.0	57.0	20 ug/L	50 ug/L	3.18 x MDL
71.	Tin - Flame	282.1	96.00	6.25	Single	MCAWW	3	10 %	4 mg/L	73.0	119.0	23.0	71.0	121.0	71.0	121.0	23.0		10 mg/L	Range
	Tin - Furnace	282.2	100.00	10.00	No data	Default	3	10 %	10 mg/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		20 ug/L	Range
	Tin - ICP	200.7	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0	7 ug/L	20 ug/L	3.18 x MDL
72.	Titanium - Flame	283.1	97.00	3.50	Single	MCAWW	3	10 %	2 mg/L	84.0	110.0	13.0	83.0	111.0	83.0	111.0	13.0		2 mg/L	Data
	Titanium - Furnace	283.2	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		50 ug/L	Range
	Titanium - ICP	200.7	100.00	10.00	No data	Default	3	10 %	100 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		1 ug/L	Range
73.	Turbidity	180.1	100.00	2.31	Single	MCAWW	3	10 %	25 NTU	91.0	109.0	8.4	90.0	110.0	90.0	110.0	8.4		0.05 NTU	Est
74.	Vanadium - Flame	286.1	100.00	5.00	Single	MCAWW	3	10 %	2 mg/L	82.0	118.0	18.0	80.0	120.0	80.0	120.0	18.0		2 mg/L	Range
	Vanadium - Furnace	286.2	85.11	32.80	Multi	Apx D	5	25 %	100 ug/L	19.0	151.0	66.0	12.0	158.0	12.0	158.0	66.0		10 ug/L	Range
	Vanadium - ICP	200.7	94.15	7.88	Multi	Apx C	3	10 %	100 ug/L	78.0	110.0	16.0	76.0	112.0	76.0	112.0	16.0	3 ug/L	10 ug/L	3.18 x MDL
	Vanadium - DCP	---																		
	Vanadium - Color	---																		
75.	Zinc - Flame	289.1	99.93	18.60	Multi	Apx D	3	10 %	100 mg/L	62.0	138.0	38.0	59.0	141.0	59.0	141.0	38.0		50 ug/L	Range
	Zinc - Furnace	289.2	168.59	67.06	Multi	Apx D	7	25 %	100 ug/L	34.0	303.0	135.0	21.0	317.0	21.0	317.0	140.0		0.2 ug/L	Range
	Zinc - ICP	200.7	93.26	12.89	Multi	Apx C	5	25 %	100 ug/L	67.0	120.0	26.0	64.0	122.0	64.0	122.0	26.0	2 ug/L	5 ug/L	3.18 x MDL
	Zinc - DCP	---																		
	Zinc - Color/Dithiz	---																		
	Zinc - Color/Zincon	---																		

BILLING CODE 6560–50–C

(c) Under certain circumstances, the Regional Administrator or the Director in the Region or State where the discharge will occur may determine that an additional parameter or pollutant of concern must be reported. Under such circumstances, an additional test procedure for the analysis of the pollutant may be specified by the Regional Administrator, or the Director, upon the recommendation of the Director of the Analytical Methods Staff.

(d) Sample preservation procedures, container materials, and maximum allowable holding times for parameters and pollutants cited in Tables IA, IB, IC, ID, and IE are prescribed in Table II. Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples collected from a specific discharge. An application for a variance may be made by letter to the Regional Administrator in the Region in which the discharge will occur. Sufficient data should be provided to ensure such variance does not adversely affect the integrity of the sample. Such data will be forwarded by the Regional Administrator to the Director of the Analytical Methods Staff for technical review and recommendations for action on the variance application. Upon receipt of a recommendation from the Director of the Analytical Methods Staff, the Regional Administrator may grant a variance applicable to samples collected from the specific discharge for which the application for variance was made. A decision to approve or deny a variance will be made within 90 days of receipt of a complete application by the Regional Administrator.

* * * * *

4. Section 136.4 is proposed to be revised to read as follows:

§ 136.4 Modifications to reference methods.

A reference method listed in tables IB, IC, or ID of this part 136 may be modified to improve separations, lower the costs of measurements, reduce or eliminate interferences, or for other purposes, provided that the modification is not explicitly prohibited in the reference method and provided that the laboratory modifying the reference method meets the requirements in this section, performs the standardized QC tests, and demonstrates that the QC acceptance criteria and the requirements specified at Appendixes E, F, and G of this part are met. A laboratory that wishes to use a new or modified wastewater method must demonstrate that the method detection limit (MDL) specified in the reference method can be achieved. Alternatively, if the effluent limitation to be measured is above the MDL, laboratories must demonstrate that the minimum level (ML) determined with the new or modified wastewater method is at or below ⅓ the effluent limitation. Demonstration of a valid detection limit requires use of an MDL study in accordance with the procedure at 40 CFR part 136 Appendix B. If the MDL determined with the new or modified method is not acceptable, the method may not be used. Specified detection limits are usually analyte-specific. For any given analyte, the specified detection limit may vary between a wastewater and drinking water reference method.

(a) Tier 1: modification of a reference method for application in a single laboratory to one or more matrix types.

(1) Application to a single matrix type.

(i) A laboratory may modify a reference method listed in tables IB, IC, and ID for determination of an analyte of concern in a specific matrix type, provided that the laboratory:

(A) Performs the standardized QC tests, including a test of initial precision and recovery (IPR) on a reagent water matrix;

(B) Performs the matrix spike (MS) and matrix spike duplicate (MSD) tests on the matrix type to which the modification is to be applied;

(C) Meets the QC acceptance criteria in the reference method or that apply to the reference method in the table of QC acceptance criteria for wastewater methods at § 136.3 Table IF;

(D) Documents the results of the QC tests using the checklists in Appendix E of this part;

(E) Maintains the results of the QC tests and other tests on file for inspection by EPA and/or the approved State NPDES authority.

(ii) After the laboratory has demonstrated application of a method modification to a given matrix type by meeting the MS/MSD QC acceptance criteria, only that laboratory may subsequently apply that method modification to that given matrix type.

(iii) A laboratory may apply a given method modification to additional matrix types if the laboratory validates the modification on each matrix type by performing a matrix spike (MS) and matrix spike duplicate (MSD) test and meeting the MS/MSD QC acceptance criteria for precision and recovery for each matrix type.

(2) Application to multiple matrix types. After a laboratory has validated a given method modification on a minimum of nine (9) matrix types in accordance with the procedures given in paragraph (a)(1) of this section, the laboratory may subsequently apply that method modification to other matrix types without validating the method modification on those subsequent matrix types, provided that:

(i) The following are included in the matrix types validated:

(A) Effluent from a publicly-owned treatment works (POTW);

(B) ASTM D 5905, Standard Specification for Substitute Wastewater;

(C) Sewage sludge, if sludge will be in the permit; and

(D) ASTM D 1141, Standard Specification for Substitute Ocean Water, if ocean water will be in the permit.

(ii) At least one of the matrix types in paragraph (a)(2)(i) of this section has at least one of the following characteristics: total suspended solids (TSS) greater than 40 mg/L, total dissolved solids (TDS) greater than 100 mg/L, oil and grease greater than 20 mg/L, sodium chloride (NaCl) greater than 120 mg/L, and calcium carbonate ($CaCO_3$) greater than 140 mg/L.

(iii) The matrix spike (MS) and matrix spike duplicate (MSD) recovery and the relative percent difference are within the QC acceptance criteria given for the analyte in the reference method or as supplemented by the QC acceptance criteria specified for wastewater methods at § 136.3 Table IF. If the method modification is to be applied to multiple media, validation must include a minimum of one matrix type from each additional medium in addition to the matrix types listed in this paragraph. If all QC acceptance criteria are not met for a given matrix type, the modification may not be applied to that matrix type.

(b) Tier 2: modification of a reference method for application by all laboratories to one or more matrix types within a single industrial category or subcategory.

(1) A person may modify a reference method for application by all laboratories to determination of an analyte of concern in a single matrix type in a single industrial category or subcategory, provided that the modification is not explicitly prohibited in the reference method and provided that the modification is validated in a minimum of three (3) laboratories, each of which test the same three (3) matrix types and each matrix type is from a different facility in the industrial category or subcategory (a minimum of nine (9) tests). Each laboratory must meet the requirements in paragraph (a)(1)(i) of this section. After the tests in all three laboratories have met all QC acceptance criteria for the reference

method, the modified reference method may be applied by laboratories nationwide to that matrix type in that industrial category or subcategory only.

(2) A person who modifies and validates a method modification under Tier 2 may submit that modification to EPA for a letter of approval using the procedures specified in Appendix F and G of this part. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1) of this section. This information and other detailed information that must be submitted and the format for submission are given in Appendixes E, F, and G of this part.

(3) A person who modifies and validates a method modification under Tier 2 may submit that modification to EPA and for approval and inclusion in a table in this part 136. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1) of this section, and the detailed information specified in Appendixes E, F, and G of this part.

(4) A person may modify a reference method for application by all laboratories to determination of an analyte of concern in additional matrix types within a single industrial category or subcategory, provided that the modification is validated in each additional matrix type according to the requirements in paragraph (b)(1) of this section.

(c) Tier 3: modification of a reference method for application by all laboratories to all matrix types in all industrial categories and subcategories (nationwide modification).

(1) A person may modify a reference method for application by all laboratories to determination of an analyte of concern in all matrix types, provided that the modification is validated in an interlaboratory method validation study or in a study with a minimum of nine (9) different laboratories each of which test a minimum of one sample from a set representing a minimum of nine (9) different matrix types for a total of a minimum of nine unique samples. Each of the nine (9) matrix types must be from a different industrial category or subcategory. Each laboratory must meet the requirements in paragraph (a)(1)(i) of this section and, the nine matrix types must collectively meet all of the criteria in paragraphs (a)(2)(i), (ii), and (iii) of this section. After the modification has been validated, it may be applied by laboratories nationwide to all matrix types.

(2) A person who modifies and validates a method modification under Tier 3 may submit that modification to EPA for a letter of approval. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1) of this section. This information and other detailed information that must be submitted and the format for submission are given in Appendixes E, F, and G of this part.

(3) A person who modifies and validates a method modification under Tier 3 may submit that modification to EPA and for approval and inclusion in a table in this part 136. The information that must be submitted includes the results of the performance tests required by paragraph (c)(1) of this section. This information and other detailed information that must be submitted and the format for submission are given in Appendixes E, F, and G of this part.

(d) A decision to recommend proposal of a Tier 2 or Tier 3 method modification will be made by the Director of the Analytical Methods Staff within 90 days of receipt of a complete application.

5. Section 136.5 is proposed to be revised to read as follows:

§ 136.5 New methods.

A person may apply to EPA for use of a new method for determination of an analyte of concern, provided that the new method meets the requirements for validation and format as set forth in this section and in appendixes E, F, and G of this part. A new method must meet the MDL criteria specified at § 136.4. A new method must: be documented in accordance with requirements in appendixes E, F, and G of this part; contain standardized QC as defined at § 136.2; contain QC acceptance criteria that have been developed in accordance with the requirements detailed in appendixes E, F, and G of this part; employ a determinative technique for an analyte of concern with selectivity or sensitivity equal or superior to the selectivity or sensitivity of the determinative technique in any approved method, and that differs from the determinative techniques employed for that analyte in all approved methods; and be accompanied by the information specified at appendix G of this part. A decision to recommend proposal of a new method will be made by the Director of the Analytical Methods Staff within 90 days of receipt of a complete application.

(a) Tier 1: application of a new method in a single laboratory to one or more matrix types.

(1) A person may develop a new method for determination of an analyte of concern in one or more matrix types by validating the method and developing QC acceptance criteria from an interlaboratory method validation study or from a single-laboratory validation study on each specific matrix type. Details of the single-laboratory method validation study and development of QC acceptance criteria from a single-laboratory or interlaboratory method validation study are specified at § 136.4(a) (1) and (2) and in appendixes E, F, and G of this part.

(2) A person who develops a new method under Tier 1 must submit the method to EPA for a letter of approval. The information that must be submitted and the format for submission is specified at in appendixes E, F, and G of this part.

(b) Tier 2: application of a new method in all laboratories to one or more matrix types within a single industrial category or subcategory.

(1) A person may develop a new method for determination of an analyte of concern in one or more matrix types within a single industrial category or subcategory by validating the method and developing QC acceptance criteria on each matrix type from an interlaboratory method validation study or from multiple, single-laboratory validation studies. Details of the multiple, single-laboratory method validation studies and development of QC acceptance criteria from these studies or from an interlaboratory method validation study are specified at § 136.4(b) (1) and (4) and in appendixes E, F, and G of this part.

(2) A person who develops a new method under Tier 2 must submit the method to EPA for approval and inclusion in a table in this part 136. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1) of this section. This information and other detailed information that must be submitted and the format for submission are given in appendixes E, F, and G of this part.

(c) Tier 3: application of a new method by all laboratories to all matrix types in all industrial categories and subcategories (nationwide use).

(1) A person may develop for nationwide use a new method for determination of an analyte of concern in all matrix types by validating the method and developing QC acceptance criteria on the matrix type from an interlaboratory method validation study or from multiple, single-laboratory validation studies. Details of the multiple, single-laboratory method validation studies and development of QC acceptance criteria from these studies or from an interlaboratory method validation study are specified at

§ 136.4(c)(1) and in appendixes E, F, and G of this part.

(2) A person who develops a new method under Tier 3 must submit the method to EPA for approval and inclusion in a table in this part 136. The information that must be submitted includes the results of the performance tests required by paragraph (c)(1) of this section. This information and other detailed information that must be submitted and the format for submission are given in appendixes E, F, and G of this part.

(d) The number and type of required tests, testing laboratories, matrices, and replicate QC tests for the method validation specified at §§ 136.4, 136.5 (a), (b), and (c) and 141.27 depend on the tier at which the new or modified wastewater or drinking water method is validated. These requirements are summarized in the following table:

SUMMARY OF VALIDATION REQUIREMENTS FOR NEW METHODS AND METHOD MODIFICATIONS [1]

Method application	Number of			Number of analyses required			
	Labs	Matrix types	Facilities PWSs	IPR-reagent water [2]	IPR-sample matrix [3]	MS/MSD	MDL [4]
Tier 1-Single-lab:							
WW/DW—First matrix type or first PWS	1	1	1	4	4	[5] 2	7
WW—Each addt'l matrix type (8 max.) from any industrial category	1	1	1	[6] 0	[6] 0	[5] 2	[6] 0
DW—Each addt'l PWS (2 max.)	1	1	1	[6] 0	[6] 0	[5] 2	[6] 0
Tier 2-Multi-lab, single matrix type	3	1	3	12	0	[7] 6	21
WW/DW—Each matrix type in a single industrial category							
Tier 3-Multi-lab, multiple matrix types	[8] 9	9	9	36	0	[7] 18	63
WW only—All matrix types, all industrial categories							

[1] Numbers of analyses in this table do not include background analyses or additional QC tests such as calibration, blanks, etc. Validation requirements are based on the intended application of the method. Method application would be designated by tier for wastewater (WW) and drinking water (DW) programs. Three would be the maximum number of public water systems (PWSs) that would be required to validate a new or modified drinking water method at Tier 1 or 2. Nine would be the maximum number of matrix types (or facilities) that would be required to validate a new or modified wastewater method at Tier 1 or 3; at Tier 2 the number would be three matrix types.

[2] IPR reagent water analyses would be used to validate a method modification and to establish QC acceptance criteria for initial precision and recovery (IPR) and ongoing precision and recovery (OPR) for a new method. The required number of IPR analyses, except as noted under footnote 7, would be four times the number of laboratories required to validate a method modification or new method because each laboratory would perform a 4-replicate IPR test.

[3] IPR sample matrix analyses would be used to establish QC acceptance criteria for matrix spike/matrix spike duplicate (MS/MSD) recovery and precision for a Tier 1 new method only. Would not be required for validation of Tier 2 or 3 new methods because this variability data would be obtained from MS/MSD tests. Would not be required for validation of a method modification because MS/MSD data from the reference method would be used.

[4] A method detection limit (MDL) test would be performed in each laboratory using the new or modified method. 40 CFR part 136 Appendix B requires a minimum of seven analyses per laboratory to determine an MDL. Each lab involved in validation of a wastewater modification would demonstrate that the modified method would achieve the detection limits specified in the regulations at 40 CFR parts 136 and 141 and/or in chapter 6 of the Streamlining Guide (EPA 1996a).

[5] MS/MSD analyses would be required only for a method modification because, for new methods, the MS/MSD QC acceptance criteria would be established by the 4-replicate sample matrix IPR test. For modified methods, the MS/MSD test would demonstrate that the reference method MS/MSD QC acceptance criteria have been met.

[6] The MDL, reagent water IPR, and sample matrix IPR tests would not have to be repeated after the first matrix type, facility, or PWS was validated.

[7] For validation of a new method, the MS/MSD analyses would establish QC acceptance criteria for MS/MSD recovery and precision. For validation of a method modification, the MS/MSD analyses would demonstrate that reference method MS/MSD recovery and precision have been met. The required number of MS/MSD analyses would be two times the number of facilities, PWSs or matrix types tested.

[8] The number of laboratories and samples would vary if a conventional interlaboratory study is used.

6. Appendix A to 40 CFR part 136 is removed and reserved. Appendix E, Appendix F, and Appendix G are added to 40 CFR part 136 to read as follows:.

Appendix A to Part 136 [Removed and Reserved]

* * * * *

Appendix E to Part 136—Equivalency Checklists

The Checklist for Initial Demonstration of Method Performance, Checklist for Continuing Demonstration of Method Performance, and Certification Statement (collectively called ''Checklists'') and instructions for their completion are provided in this appendix. Because these checklists were developed by EPA's Environmental Monitoring Management Council (EMMC) for general application across all EPA programs, the lists contain categories that are not relevant to approval of drinking water or wastewater methods. Therefore, these categories are indicated in this appendix by ''NA'' (not applicable). The EMMC instructions have been annotated, where appropriate, to clarify each checklist item's applicability to the approval of drinking water and wastewater methods.

Checklist for Initial Demonstration of Method Performance

For the demonstration of equivalency, provide a checklist for each matrix in each medium.

Date:

Page _____ of _____

Laboratory Name & Address:

Facility Name:

Discharge Point ID:

EPA Program and Applicable Regulation:

Medium:

(e.g., wastewater, drinking water, soil, air, waste solid, leachate, sludge, other)

Analyte or Class of Analytes:

(e.g., barium, trace metals, benzene, volatile organics, etc.)

INITIAL DEMONSTRATION OF METHOD PERFORMANCE [1]

Category	Performance criteria [2] based on		Results obtained	Perf. spec. achieved (√)
	Measurement quality objective	Reference method		
1. Written method (addressing all elements in the EMMC format) attached				
2. Title, number and date/rev. of ''reference method'', if applicable [3]				
3. Copy of the reference method, if applicable, maintained at facility				
4. Differences between PBM and reference method (if applicable) attached				
5. Concentrations of calibration standards				
6. %RSD or correlation coefficient of calibration regression				
7. Performance range tested (with units)				
8. Sample(s) used in initial demonstration have recommended preservative, where applicable.				
9. Sample(s) used in initial demonstration met recommended holding times, where applicable				
10. Interferences				
11. Qualitative identification criteria used				
12. Performance Evaluation studies performed for analytes of interest, where available: Latest study sponsor and title: Latest study number:				
13. Analysis of external reference material				
14. Source of reference material				
15. Surrogates used, if applicable				
16. Concentrations of surrogates, if applicable				
17. Recoveries of surrogates appropriate to the proposed use, if applicable				
18. Sample preparation				
19. Clean-up procedures				
20. Method Blank Result				
21. Matrix (reagent water, drinking water, sand, waste solid, ambient air, etc.)				
22. Spiking system, appropriate to method and application				
23. Spike concentrations (w/ units corresponding to final sample concentration)				
24. Source of spiking material				
25. Number of replicate spikes				
26. Precision (analyte by analyte)				
27. Bias (analyte by analyte)				
28. Detection Limit (w/ units; analyte by analyte)				
29. Confirmation of Detection Limit, if applicable				
30. Quantitation Limit (w/ units: analyte by analyte)				
31. Qualitative Confirmation				
32. Frequency of performance of the Initial Demonstration				
33. Other criterion (specify)				
34. Other criterion (specify)				

[1] Provide a detailed narrative description of the initial demonstration.
[2] For multi-analyte methods, enter ''see attachment'' and attach a list or table containing the analyte-specific performance criteria from the reference method or those needed to satisfy measurement quality objectives.
[3] If a reference method is the source of the performance criteria, the reference method should be appropriate to the required application, and the listed criteria should be fully consistent with that reference method.

Name and signature of each analyst involved in the initial demonstration of method performance (includes all steps in the proposed method/modification):

_____
Name

_____
Signature

_____
Date

_____
Name

_____
Signature

_____
Date

_____
Name

_____
Signature

_____
Date

The certification above must accompany this form each time it is submitted.

Checklist for Continuing Demonstration of Method Performance

For the demonstration of equivalency, provide a checklist for each matrix in each medium.
Page____ of ____
Date:
Laboratory Name & Address:
Facility Name:
Discharge Point ID:
EPA Program and Applicable Regulation:
Medium:
(e.g., wastewater, drinking water, soil, air, waste solid, leachate, sludge, other)
Analyte or Class of Analytes:
(e.g., barium, trace metals, benzene, volatile organics, etc.)

CONTINUING DEMONSTRATION OF METHOD PERFORMANCE

Category	Required frequency	Specific performance criteria	Results obtained	Performance specific achieved (✔)
1. Method blank result (taken through all steps in the procedure)				
2. Concentrations of calibration standards used to verify working range (with units), where applicable				
3. Calibration verification				
4. Laboratory control sample				
5. External QC sample (where available)				
6. Performance evaluation (PE) studies, if applicable				
Latest study sponsor and title:				
Latest study number:				
7. List analytes for which results were ''not acceptable'' in PE study	.....	.....	.....	.....
8. Surrogates used, if applicable				
9. Concentration of surrogates, if applicable				
10. Recovery of surrogates (acceptance range for multi-analyte methods), if applicable				
11. Matrix				
12. Matrix spike compounds				
13. Concentration of matrix spike compounds				
14. Recoveries of matrix spike compounds				
14a. Recoveries of matrix spike duplicate compounds				
15. Qualitative identification criteria used				
16. Precision (analyte by analyte)				
17. Other category (specify)				
18. Other category (specify)				

Name and signature of each analyst involved in continuing demonstration of method performance (includes all steps in the proposed method/modification):

_____
Name

_____
Signature

_____
Date

_____
Name

_____
Signature

_____
Date

_____
Name

_____
Signature

_____
Date

The certification above must accompany this form each time it is submitted.

Certification Statement

Page____ of ____
Date:
Laboratory Name & Address:
Facility Name:
Discharge Point ID:
EPA Program and Applicable Regulation:
Medium:
(e.g., water, soil, air)
Analyte or Class of Analytes:
(e.g., barium, trace metals, benzene, volatile organics, etc.; Attach separate list, as needed.)
We, the undersigned, CERTIFY that:

1. The method(s) in use at this facility for the analysis/analyses of samples for the programs of the U.S. Environmental Protection Agency have met the Initial and any required Continuing Demonstration of Method Performance Criteria specified by EPA.

2. A copy of the method used to perform these analyses, written in EMMC format, and copies of the reference method and laboratory-specific SOPs are available for all personnel on-site.

3. The data and checklists associated with the initial and continuing demonstration of method performance are true, accurate, complete and self-explanatory.[1]

4. All raw data (including a copy of this certification form) necessary to reconstruct and validate these performance related analyses have been retained at the facility, and that the associated information is well organized and available for review by authorized inspectors.

_____
Facility Manager's Name and Title

_____
Signature

_____
Date

_____
Quality Assurance Officer's Name

_____
Signature

_____
Date

This certification form must be completed when the method is originally certified, each time a continuing demonstration of method performance is documented, and whenever a change of personnel involves the Facility Manager or the Quality Assurance Officer.

Accurate: Based on good laboratory practices consistent with sound scientific principles/practices.

Complete: Includes the results of all supporting performance testing.

Self-Explanatory: Data properly labeled and stored so that the results are clear and require no additional explanation.

EMMC Checklists Instructions

Checklists Overview

The Checklists were arrived at through consensus among EPA's programs by developing performance ''categories'' that allow use of the same Checklists across the Agency's various programs/projects. The Checklists may be applied to screening and field techniques as well as laboratory procedures.

Implementation of the Checklists is program-specific and a category that does not apply within a given EPA program will be indicated by NA (not applicable). Criteria for a specific EPA program are to be filled in under the ''Performance Criteria'' column; e.g., an Office of Water Reference Method may specify 20% RSD or a correlation coefficient of 0.995 for the category that specifies calibration linearity, whereas an Office of Solid Waste Project may specify a Measurement Quality Objective of 12% RSD or a correlation coefficient of 0.998 for this category.

For each EPA program, the Checklists are to be completed for each matrix within each medium for all matrices and media to which an alternate method or method modification applies. The EMMC definition of media is equivalent to the definition at 136.2 of matrix type. Each completed Checklist must be retained on file at the laboratory that uses the

[1] True: Consistent with supporting data.

performance-based method (PBM) or method modification and at the regulated facility from which samples are collected, and must be submitted to the appropriate Regulatory Authority upon request to support analysis of those samples to which the PBM or modified method was applied. (For wastewater and drinking water methods, the term ''PBM method'' in the preceding sentence is replaced with the term ''new method'.)

Header:

Each page of the checklist contains seven lines of header information, consisting of:

(1) Date (enter the date that the checklist was completed—Program/Project implementation plans should indicate whether the checklist must be submitted to the Regulatory Authority, as well as, retained on file at the laboratory and regulated facility).

(2) Laboratory Name & Address (If a commercial contract laboratory uses the method on behalf of one or more applicable clients, enter the name and address of the laboratory.)

(3) Facility Name (enter the name of the water treatment facility, system, or regulated facility or other program or project specified entity where the facility maintains an on-site analytical laboratory. If the method is being employed by a commercial contract laboratory on behalf of one or more applicable clients, enter the name of the laboratory followed by a listing of the appropriate clients).

(4) Discharge Point Identification Number (enter the discharge point identification number, if applicable).

(5) EPA Program & Applicable Regulation (enter the name of the Agency Program or Project to whom the results will be reported, or under the auspices of which the data are collected, e.g., ''CAA'' for Clean Air Act monitoring and ''SDWA'' for analyses associated with the Safe Drinking Water Act).

(6) Medium (enter the type of environmental sample, e.g., drinking water—**Note:** A separate checklist shall be prepared for each medium, e.g., for checklists associated with performance-based methods for SDWA, enter ''Drinking Water'' as the matrix type. As the evaluations of a performance-based method involve matrix-specific performance measures, a separate checklist shall be prepared for each matrix. The ''medium'' is the environmental sample type to which the performance-based method applies, whereas the performance category ''matrix'', appearing in the body of the checklists refers to the specific sample type within the ''Medium'' that was spiked, e.g., for ''medium'' hazardous waste, the checklist category ''matrix'' may be solvent waste. For wastewater and drinking water methods, the term ''medium'' is replaced with the term ''matrix'.

(7) Analyte or Class of Analytes, where available. (As many methods apply to a large number of analytes, it is not practical to list every analyte in this field, as indicated on the form, the class of analytes may be specified here, i.e., volatile organics. However, if such a classification is used, a separate list of analytes and their respective Chemical Abstract Service Registry Numbers (CAS #) must be attached to the checklist).

Initial Demonstration of Method Performance Checklist

The Initial Demonstration of Method Performance involves multiple spikes into a defined sample matrix (e.g., wastewater medium, paper plant effluent matrix), to demonstrate that the Performance-based Method meets the Program or Project Performance Criteria based on the performance of established ''Reference Method'' or based on ''Measurement Quality Objectives'' (formerly called Data Quality Objectives). This exercise is patterned after the ''Initial Demonstration of Capability'' delineated in a number of the Agency's published methods (Reference Methods).

Footnote #1 indicates that a detailed narrative description of the initial demonstration procedure is to be provided.

Footnote #2 indicates that for multi-analyte methods, the range of performance criteria for the analytes may be entered, but an analyte-specific performance criteria is to be attached. In general, when using the checklists, if the criteria or performance are lengthy, attach as a separate sheet, and enter ''see attached'' for this item.

Footnote #3 indicates that if a reference method is the source of the performance criteria, the reference method should be appropriate to the required application and the listed criteria should be fully consistent with that reference method. The reference method name and EPA number (where applicable) should be delineated in the program/project implementation plan, e.g., by the Program Office or the Project Officer/Manager.

There are 34 numbered entries in the body of the checklist—NOTE: Under normal circumstances, it would never be acceptable to answer ''No'' to any of these performance categories, or fail to attach the requested materials (categories not applicable to drinking or wastewater methods are marked with ''NA''):

#1. Written Method (addressing all elements in the EMMC format)

The details of the method used for analysis must be described in a version of the method written in EMMC format, which is specified for drinking water and wastewater methods at 40 CFR part 136 Appendix F. The EMMC method format includes the following: 1.0 Scope & Application; 2.0 Summary of Method; 3.0 Definitions; 4.0 Interferences; 5.0 Safety; 6.0 Equipment & Supplies; 7.0 Reagents & Standards; 8.0 Sample Collection, Preservation & Storage; 9.0 Quality Control; 10.0 Calibration & Standardization; 11.0 Procedures; 12.0 Data Analysis & Calculations; 13.0 Method Performance; 14.0 Pollution Prevention; 15.0 Waste Management; 16.0 References; 17.0 Tables, Diagrams, Flowcharts & Validation Data. While this format may differ from that used in standard operation procedures (SOPs) in a given laboratory, the use of a consistent format is essential for the efficient and effective evaluation by inspectors, program and project managers/officers.

#2. Title, Number and date/revision of ''Reference Method'' if applicable.

For Example Polychlorinated Dioxins and Furans, EPA Method 1613, Revision B, October, 1994.

#3. Copy of the reference method, if applicable, maintained at the facility.

A copy of the reference method must be kept available for all laboratory personnel, however, it need not be attached to the checklist itself.

#4. Differences between PBM and reference method attached.

The laboratory must summarize the differences between the reference method and the performance-based method and attach this summary to the checklist. This summary should focus on significant difference in techniques (e.g., changes beyond the flexibility allowed in the reference method), not minor deviations such as the glassware used.

#5. Concentrations of calibration standards.

The range of the concentrations of materials used to establish the relationship between the response of the measurement system and analyte concentration. This range must bracket any action, decision or regulatory limit. In addition, this range must include the concentration range for which sample results are measured and reported (when samples are measured after sample dilution/concentration).

#6. % RSD or Slope/Correlation Coefficient of Calibration Regression.

This performance category refers to quantitative measures describing the relationship between the amount of material introduced into the measurement system and the response of the system, e.g., analytical instrument. A linear response is generally expected and is typically measured as either a linear regression or inorganic analytes, or as the relative standard deviation (or coefficient of variation) of the response factors or calibration factors for organic analytes. Traditional performance specifications considered any regression line with a correlation coefficient (r) of 0.995 or greater as linear. Also, for organic analytes, a relative standard deviation (RSD) of 25% or less is considered linear. The calibration relationship is not necessarily limited to a linear relationship. However, it should be remembered if the Program/Project Office or Officer/Managers specifies other calibration relationships, e.g., quadratic fit, more calibration standards are generally necessary to accurately establish the calibration. If applicable, a calibration curve, graphical representation of the instrument response versus the concentration of the calibration standards, should be attached.

#7. Performance Range Tested (with units).

This range must reflect the actual range of sample concentrations that were tested and must include the concentration units. Since the procedures may include routine sample dilution or concentration, the performance range may be broader than the range of the concentrations of the calibration standards.

#8. Sample(s) used in initial demonstration have recommended preservative, where applicable.

Unless preservation have been specifically evaluated, this entry should be taken directly from the reference method/standard. If preservation has been evaluated, include the study description and conclusions of that evaluation, with a reference to the specific study description. The data must be attached.

#9. Sample(s) used in the initial demonstration must be within the recommended holding times, where applicable.

Unless holding time (time from when a sample is collected until analysis) has been specifically evaluated, this entry should be taken directly from the reference method/standard. If holding time has been evaluated, include the study description and conclusions of that evaluation here, with a reference to the specific study description. The data must be attached.

#10. Interferences.

Enter information on any known or suspected interferences with the performance-based method. Such interferences are difficult to predict in many cases, but may be indicated by unacceptable spike recoveries in environmental matrices, especially when such recovery problems were not noted in testing a clean matrix such as reagent water. The inferences associated with the reference method are to be indicated, as well as, the affect of these interferences on the performance-base method.

#11. Qualitative identification criteria used.

Enter all relevant criteria used for identification, including such items as retention time, spectral wavelengths, ion abundance ratios. If the instrumental techniques for the performance-based method are similar to the reference method, use the reference method as a guide when specifying identification criteria. If the list of criteria is lengthy, attach it on a separate sheet, and enter ''see attached'' for this item.

#12. Performance Evaluation Studies performed for analytes of interest, where available (last study sponsor and title:; last study number:).

Several EPA Programs conduct periodic performance evaluation (PE) studies. Organizations outside of the Agency also may conduct such studies. Enter the sponsor, title, and date of the most recent study in which the performance-based method was applied to the matrix of interest. For the performance-based method to be acceptable, the performance on such studies must be ''fully successful'', i.e., within the study QC acceptance criteria.

#13. Analysis of external reference material.

Enter the results of analyses on reference material from a source different from that used to prepare calibration standards (where applicable). This performance category is especially important if Performance Evaluation Studies are not available for the analytes of interest. Analysis of a reference sample is one of standardized QC elements specified for wastewater and drinking water methods at 40 CFR 136.4, 136.5 and 141.27. A common (and recommended) reference sample is a Reference Material from the National Institute of Standards and Technology.

#14. Source of reference material.

Enter criteria, if applicable, for traceability of materials used to verify the accuracy of the results, e.g., obtained from the National Institute of Science and Technology (NIST).

#15. Surrogates used if applicable.

Surrogates may be added to samples prior to preparation, as a test of the entire analytical procedure. These compounds are typically brominated, fluorinated or isotopically labeled compounds, with structural similarities to the analytes of interest. Also, they are not expected to be present in environmental samples. Surrogates are often used in the analysis for organic analytes. Enter the names of the surrogate compounds in this category.

#16. Concentrations of surrogates (if applicable).

Enter the concentration of surrogates once spiked into the sample (i.e., final concentration).

#17. Recoveries of Surrogates appropriate to the proposed use (if applicable).

Enter the summary of the surrogate recovery limits and attach a detailed listing if more space is needed.

#18. Sample Preparation.

Enter necessary preliminary treatments necessary, e.g., digestion, distillation and/or extraction. A detailed listing may be attached if more space is needed.

#19. Clean-up Procedures.

Enter necessary intermediatory steps necessary prior to the determinative step (instrumental analysis), e.g., GPC, copper sulfate, alumina/Florisil treatment, etc.

#20. Method Blank Result.

A clean matrix (i.e., does not contain the analytes of interest) that is carried through the entire analytical procedure, including all sample handling, preparation, extraction, digestion, cleanup and instrumental procedures. The volume or weight of the blank should be the same as that used for sample analyses. The method blank is used to evaluate the levels of analytes that may be introduced into the samples as a result of background contamination in the laboratory. Enter the analyte(s) and concentration measured in the blank.

#21. Matrix (reagent water, drinking water, soil, waste solid, air, etc.).

Refers to the specific sample type within the broader ''Medium'' that was spiked, e.g., for the Medium ''Hazardous Waste,'' an example matrix spiked as part of the initial demonstration of method performance might be ''solvent waste''. For wastewater and drinking water methods, the term ''medium'' is replaced with ''matrix'.

#22. Spiking System, appropriate to the method and application.

Enter the procedure by which a known amount of analyte(s) (''spike'') was added to the sample matrix. This may include the solvent that is employed and the technique to be employed (e.g., permeation tube, or volumetric pipet delivery techniques spiked onto a soil sample and allowed to equilibrate one day, etc.). Solid matrices are often difficult to spike and considerable detailed narrative may be necessary to delineate the procedure. For spikes onto aqueous samples, generally a water miscible solvent is specified.

#23. Spike levels (w/units corresponding to final sample concentration).

Enter the amount of the analyte(s) (''spike'') that was added to the sample matrix in terms of the final concentration in the sample matrix. For wastewater and drinking water methods, initial spikes, also known as initial precision and recovery (IPR) standards, will be performed in reagent water. Using reagent water will allow the comparison of IPR spike recoveries determined with the modified method against IPR criteria specified in the reference method because reference method IPR specifications are developed from reagent water spikes.

#24. Source of spiking material.

Enter the organization or vendor from which the ''spiking'' material was obtained. This should include specific identification information, e.g., lot#, catalogue number, etc.

#25. Number of Replicate Spikes.

The initial demonstration of method performance involves the analyses of replicate spikes into a defined sample matrix category #21. Enter the number of such replicates. In general, at least four replicates should be prepared and analyzed independently.

#26. Precision (analyte by analyte).

Precision is a measure of agreement among individual determinations. Statistical measures of precision include standard deviation, relative standard deviation or percent difference.

#27. Bias (analyte by analyte).

Bias refers to the systematic or persistent distortion of a measurement process which causes errors in one direction. Bias is often measured at the ratio of the measured value to the ''true'' value or nominal value. Bias is often (erroneously) used interchangeably with ''accuracy'', despite the fact that the two terms are complementary, that is, high ''accuracy'' implies low ''bias'', and vice versa. Enter the name of the Bias measure (% recovery, difference from true, etc.), the numeric value with associated units for each analyte obtained for each analyte spiked in the initial demonstration procedure.

#28. Detection Limit (w/units; analyte by analyte).

A general term for the lowest concentration at which an analyte can be detected and identified. There are various measures of detection which include Limit of Detection and Method Detection Limit. Enter the detection measure (e.g., ''MDL'') and the analytical result with units for each analyte in the matrix (#21). For wastewater and drinking water methods MDL requirements are specified at 40 CFR 136.4 and 141.27.

#29. Confirmation of Detection Limit.

In addition to spikes into the matrix of interest (#21) it may be beneficial to perform the detection measurements in a clean matrix, e.g., laboratory pure water. Results of the spikes in the clean matrix are frequently available in the Agency's published methods. Determining MDLs in a clean matrix using the performance-based method will allow a comparison to the MDLs published in the Agency methods.

Also, the detection limit technique may specify specific procedures to verify that the obtained limit is correct, e.g., the ''iterative process'' detailed in the 40 CFR part 136, Appendix B, MDL procedures.

#30. Quantitation Limit (w/units; analyte by analyte).

The lowest concentration that the analyte can be reported with sufficient certainty that

an unqualified numeric value is reportable. Measures of Quantitation limits include the Minimum Level (ML), Interim Minimum Level (IML), Practical Quantitation Level (PQL), and Limit of Quantitation (LOQ). Enter the measure of quantitation limit, and the units for each analyte.

#31. Qualitative confirmation.

Enter all relevant criteria used for identification, including such items as: retention time; use of a second chromatographic column; use of second (different) analytical technique; spectral wavelengths; and ion abundance ratios. If the instrumental techniques for the modified method are similar to those of the reference method, use the reference method as a guide when specifying confirmation criteria. If the list of criteria is lengthy, attach it on a separate sheet, and enter ''see attached'' for this item.

#32. Frequency (initial Demonstration to be performed).

Enter the frequency that the initial demonstration has to be repeated, e.g., with each new instrument or once a year, which ever is more frequent.

#33–#34. Other Criteria.

Enter other necessary program/project specific method performance categories. For wastewater and drinking water methods, Categories 33 and 34 are used as follows:

#33. Matrix Spike/Matrix Spike Duplicate.

Enter the percent recoveries of analytes spiked into the sample matrix. For method modifications, only one set of matrix spike/matrix spike duplicate (MS/MSD) samples are required. For new methods, two sets of MS/MSD samples must be analyzed to provide sufficient data for QC acceptance criteria development.

#34. Matrix Spike/Matrix Spike Duplicate Relative Percent Deviation.

Enter the calculated relative percent deviation between the MS and MSD analyte recoveries.

Signatures:

The name, signature and date of each analyst involved in the initial demonstration of method performance is to be provided at the bottom of the check sheet.

Continuing Demonstration of Capability Checklist

The process by which a laboratory documents that their previously established performance of an analytical procedure continues to meet performance specifications as delineated in this checklist.

#1. Method Blank.

A clean matrix (i.e., one that does not contain the analytes of interest) that is carried through the entire analytical procedure, including all sample handling, preparation, extraction, digestion, cleanup and instrumental procedures. The volume or weight of the blank should be the same as that used for sample analyses. The method blank is used to evaluate the levels of analytes that may be introduced into the samples as a result of background contamination in the laboratory. Enter the analyte(s) and concentration measured in the blank.

#2. Concentrations of calibration standards used to verify working range, where applicable (include units).

The range of the concentrations of materials used to confirm the established relationship between the response of the measurement system and analyte concentration. This range must bracket any action, decision or regulatory limit. In addition, this range must include the concentration range for which sample results are measured and reported (when samples are measured after sample dilution/concentration). Enter the concentrations of the calibration standards.

#3. Calibration Verification.

A means of confirming that the previously determined calibration relationship still holds. This process typically involves the analyses of two standards with concentrations which bracket the concentrations measured in the sample(s). Enter the procedure to be used to verify the calibration and the results obtained for each analyte.

#4. Calibration check standard.

A single analytical standard introduced into the instrument as a means of establishing that the previously determined calibration relationship still holds. Enter the concentrations and result for each analyte.

#5. External QC sample (where applicable).

Enter the results of analyses for reference material (e.g., Quality Control samples/ampules) from a source different from that used to prepare calibration standards (where applicable). Enter the concentration, as well as, the source of this material. This performance category is of particular importance if Performance Evaluation studies are not available for the analytes of interest.

#6. Performance Evaluation studies performed for analytes of interest, where available (Last study sponsor and title: Last study number:).

Several EPA Programs conduct periodic performance evaluation (PE) studies. Other organizations, outside of the Agency, also conduct such studies. Enter the sponsor, title, and date of the most recent study in which the performance-based method was applied to the matrix of interest. For the Performance-based method to be acceptable the performance on such studies must be ''fully successful'', i.e., within the study QC acceptance criteria.

#7. List of analytes for which results were ''not acceptable'' in PE study.

#8. Surrogate Compounds used (if applicable).

Surrogates may be added to samples prior to preparation, as a test of the entire analytical procedure. These compounds are typically brominated, fluorinated or isotopically labeled compounds, with structural similarities to the analytes of interest. They are compounds not expected to be present in environmental samples. Surrogates are often used in analyses for organic analytes. Enter the names of the surrogate compounds in this performance category.

#9. Concentration of surrogates (if applicable).

Enter the concentration of surrogates once spiked into the sample (i.e., final concentration), with units.

#10. Recoveries of Surrogates appropriate to the proposed use (if applicable).

Enter the summary of the surrogate recovery limits and attached a detailed listing (each surrogate compound), if more space is needed.

#11. Matrix (reagent water, drinking water, soil, waste solid, air, etc.).

Refers to the specific sample type within the broader ''Medium'' that was spiked, e.g., for the Medium ''Hazardous Waste,'' an example matrix spiked as part of the initial demonstration of method performance might be ''solvent waste''.

#12. Matrix Spike Compounds.

In preparing a matrix spike a known amount of analyte is added to an aliquot of a real-world sample matrix. This aliquot is analyzed to help evaluate the effects of the sample matrix on the analytical procedure. Matrix spike results are typically used to calculate recovery of analytes as a measure of bias for that matrix. Enter the analytes spiked.

#13. Matrix Spike Concentrations (w/units corresponding to final sample concentration).

Enter the amount of the analyte(s) (''spike'') that was added to the sample matrix in terms of the final concentration in the sample matrix.

#14. Recovery of Matrix Spike (w/units).

The ratio of the standard deviation of a series of at least three measurements to the mean of the measurements. This value is often expressed as a percentage of the mean.

Note: Some programs/projects have utilized matrix spike duplicates (a separate duplicate of the matrix spike) to help verify the matrix spike result and to provide precision data for analytes which are not frequently found in real-world samples, i.e., duplication of non-detects provides little information concerning the precision of the method.

#15. Qualitative identification criteria used.

Enter all relevant criteria used for identification, including such items as retention times, spectral wavelengths, ion abundance ratios. If the instrumental techniques for the Performance-based method are similar to the reference method, use the reference method as a guide when specifying identification criteria. If the list of criteria is lengthy, attach it on a separate sheet, and enter ''see attached'' for this item.

#16. Sample Preparation.

Enter necessary preliminary treatments necessary, e.g., digestion, distillation and/or extraction. A detailed listing may be attached if more space is needed.

#17. Clean-up Procedures.

Enter intermediatory steps necessary to prior to the determinative step (instrumental analysis), e.g., GPC, copper sulfate, alumina/florisil treatment, etc.

#18. Confirmation.

Qualitative identification criteria used. Enter all relevant criteria used for identification, including such items as: retention time; use of second chromatographic column; use of second (different) analytical technique; spectral wavelengths, ion abundance rations. If the instrumental techniques for the Performance-based method are similar to the reference method, use the reference method as a guide when specifying confirmation criteria. If the

list of criteria is lengthy, attach it on a separate sheet, and enter ''see attached'' for this item.

#19–20. Other.

Enter other necessary program/project specific method performance categories.

Signatures:

The name, signature and date of each analyst involved in the continuing demonstration of method performance is to be provided at the bottom of the checklist.

Appendix F to Part 136—Guidelines and Format for Methods to be Proposed at 40 CFR Part 136 or Part 141

This appendix has been prepared to promote consistency among analytical methods and to streamline the method promulgation process. The elements in this appendix are mandatory for all methods proposed for approval at 40 CFR part 136 or 141. The appendix has four sections. The first section specifies standard elements that must be included in the method, the second section specifies the required method format, the third section specifies conventions to be used when preparing the method, and the fourth section specifies the required method content.

1.0 Elements

1.1 Cover Page

For methods submitted to EPA from other organizations or individuals, no cover page is required. Prior to method publication, EPA will prepare the cover page in the standard EPA format. The cover page will use black ink on white or colored paper stock and may include a cover graphic that illustrates the method.

EPA will assign a three- or four-digit method number that correlates with the EPA method series to which the method belongs. The method number is included as the first part of the method title on the cover page.

1.2 Title Page

There are two types of title page: a title page prepared by an organization or individual that is submitting a method to EPA, and the final title page that appears in the EPA-published method.

1.2.1 Individuals or organizations submitting methods to EPA should include the following information on the title page of the method: Method title, Date, and Sponsoring organization with address and telephone number.

1.2.1.1 When titling the method, use a concise title that cites (in sequence) the particular analyte(s) or property being determined, the type of sample or sample matrix(ces) to which the method is applicable, as appropriate, and the determinative technique or instrumentation. Apply the following guidelines in titling methods:

1.2.1.1.1 If the method applies to numerous matrices (such as water, soil, sediment, sludge, tissue, and others), it may not be practical to include matrices in the title. However, if the method applies to a single matrix or a limited number of matrices, the matrix(ces) should be specified in the title.

1.2.1.1.2 If the method is used to determine a number of analytes or properties, analytes or properties can be named as a group (e.g., trace elements), and the names of specific analytes or properties omitted.

1.2.1.1.3 Avoid the use of the terms ''analysis of...'' or ''determination of...'' in method titles, since these terms are understood within the context of the term ''method.''

1.2.1.1.4 Method titles should use abbreviations or acronyms for familiar parts of the method title, e.g., HRGC/HRMS. The acronym or abbreviation should be defined at first use in the method. Examples of suitable method titles are: ''Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry'' and ''Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS''.

1.2.1.2 For a methods manual, use a title that identifies the category of methods included in the manual. Examples of suitable methods manual titles are: ''Analytical Methods for Pulp and Paper Industry Wastewater'' and ''Analytical Methods for the Determination of Pollutants in Pharmaceutical Manufacturing Industry Wastewater'.

1.2.2 Before publishing the method, EPA will generate a title page that mimics the cover page (excluding any cover graphics).

11.3 Acknowledgments

Acknowledgments should identify the author and editor, and provide credit to researchers, peer reviewers, and organizations or individuals that contributed directly and substantively in the development and writing of the method. These acknowledgments are independent of references listed at the end of the method.

1.4 Disclaimer

The disclaimer may appear on the same page with the acknowledgments or may be on the page following the acknowledgments. It may contain one or more disclaimer statements. All disclaimers should include the following statement: ''The mention of trade names or commercial products does not constitute endorsement or recommendation for use.''

The disclaimer may not state explicitly or imply that EPA has granted any approval of the method. Once the method has been validated and submitted to EPA for proposal, however, the following statement may be included: ''This method has been submitted to the U.S. Environmental Protection Agency for use in EPA's water programs but has not been approved for use by EPA.''

For draft methods, include the following statement: ''This method is in draft form. It has not been released by the U.S. Environmental Protection Agency and should not be construed as an Agency-endorsed method. It is being circulated for comments on its technical merit.''

When preparing the method for proposal at 40 CFR part 136 or 141, EPA will edit the disclaimer to cite the Agency review process that the method has undergone.

1.5 Table of Contents

A table of contents is required for methods manuals and is recommended for single methods that exceed 25 pages in length. The table of contents should cite the titles and page numbers of all first-and second-order headings (see section 2.9 of this appendix) and all tables and figures.

1.6 Introduction

In the introduction, provide background on the method, describe the purpose of the method, and include a summary-level description of the method. Identify the name, organization, address, and telephone number to contact for questions regarding the method.

When preparing the validated method for submission to EPA for proposal at 40 CFR part 136 or 141, include the following instructions at the end of the introduction:

Questions concerning this method or its application should be addressed to: W. A. Telliard, USEPA Office of Water, Analytical Methods Staff, Mail Code 4303, 401 M Street, S.W., Washington, DC 20460, 202/260–7120.

Requests for additional copies of this publication should be directed to: Water Resource Center, Mail Code RC–4100, 401 M Street, SW., Washington, DC 20460, 202/260–7786.

1.7 Notice of Performance-based Method

All methods prepared should be performance-based and should contain the following notice on a separate page directly preceding the body of the method: ''Note: This method is performance-based. The laboratory is permitted to modify or omit any step or procedure, provided that all performance requirements set forth in this method and in the applicable regulations at 40 CFR parts 136 and 141 are met. The laboratory may not omit any quality control analyses. The terms ''shall,'' ''must,'' and ''may not'' indicate steps and procedures required for producing reliable results. The terms ''should'' and ''may'' indicate optional steps that may be modified or omitted if the laboratory can demonstrate that the modified method produces results equivalent or superior to results produced by this method.''

1.8 Body of Method

The body of the method must be presented in the EMMC format. See Section 4.0 of this appendix for a detailed description of this format.

2.0 Format

2.1 Page Numbering

Page numbers should appear in the bottom center of the page. For methods prepared double-sided, page numbers may appear on the outside bottom corner of the page (i.e., on the bottom right for right-hand pages and on the bottom left for left-hand pages). 2.1.1 Numbering front matter—Number the front matter (i.e., everything preceding the body of the method) consecutively using lower-case Roman numerals. The numerals should appear on the bottom of each page of the front matter, except for the cover and title pages. The cover page is unnumbered. The title page holds the place of page i, but the numeral is not displayed.

2.1.2 Numbering body of method—Number the body of the method consecutively with Arabic numerals on the bottom of each page, starting with the number 1.

2.2 Method Identification

2.2.1 The method introduction page(s) should contain a header that identifies the method number and revision number or letter. The first page of the body of the method (preceding 1.0 Scope and Application) should start with the method number and title in the top center of the page with no header. Each pursuant page of the method should contain a header that identifies the method number and revision number or letter. The header also must be separated from the main body of the method by a horizontal line running the width of the page.

2.2.2 If the method was assigned a non-EPA method number during its development and validation, when preparing the method for submission to EPA for proposal at 40 CFR part 136 or 141, edit the header to reflect the method number assigned by EPA (i.e., Method 1664).

2.3 Method Date

The date of the method (month and year) should appear on the bottom of each page of the method.

2.4 Font

For text, use an 11-point Times Roman font (typeface). For first-order headings, use a bold, 14-point Univers font. For section numbering, use a bold, 12-point Univers font. For headers and footers, use an italics, 9-point Univers font. Univers or Times Roman fonts may be used in tables as appropriate. If Univers is unavailable, Helvetica may be substituted.

2.5 Margins

Left and right margins should be one inch. The header should be 0.5 inch from the top of the page, with the text starting one inch from the top of the page. The page number should appear 0.5 inch from the bottom of the page, with the text starting one inch from the bottom of the page.

2.6 Justification

Use left justification for text. This results in a ragged-right margin.

2.7 Line Spacing

The method should be single-spaced. (If preferred, 1.1 line spacing can be used to enhance readability.) One blank line should appear between each paragraph and section.

2.8 Method Sections

Each method must contain the sections given in the EMMC method format. See Section 4.0 for a detailed description of this format. If a section does not apply to a particular method, include the section with a statement that it is not applicable to that method.

2.9 Section Headings and Numbering

Use the Modified Decimal Numbering (MDN) system to organize material presented in methods and methods manuals. In this system, each method section and subsection is assigned a unique number that shows the relationship of a specific section/subsection to all previous sections/subsections and allows for easy reference. This numbering system is used in this document.

The first-order headings are the 17 sections identified in Section 4, starting with ''1.0 Scope and Application''. First-order headings must appear on a separate line, with a blank line appearing between the heading and the section text. Subsections are numbered and may or may not have a heading preceding the text. Second-order headings or sections are numbered 1.1, 1.2, 1.3, 1.4, etc. Third-order headings or sections are numbered 1.1.1, 1.1.2, 1.1.3, etc. Fourth-order headings or sections are numbered 1.1.1.1, 1.1.1.2, 1.1.1.3, etc.

Do not number beyond the fourth-order heading or section. If additional subdivisions are necessary, use (a), (b), (c), etc. to identify further divisions. Use of subdivisions below the fourth-order heading or section should be avoided where possible by organizing the material differently.

2.10 Indentation

First-order headings should appear flush left. Each subsequent order heading should be block-indented to align with the text of the previous order heading. This indentation method is illustrated in this document.

2.11 Electronic Submission

Methods and methods manuals must be prepared and submitted to EPA in both hardcopy and electronic formats.

2.11.1 Hardcopy methods should be produced in black type on white or off-white recycled paper and printed or copied double-sided.

2.11.2 Electronic methods must be submitted in machine-readable format, either ASCII or Agency standard (Novell WordPerfect® 6.1 or later).

2.11.3 To enable anyone accessing a method electronically to be certain they have retrieved the entire section or method accessed, include a ''section end'' notice at the end of each first-order section. This is illustrated as follows:

2.12 References

Use the following format for order, content, and punctuation when listing references.

2.12.1 Books—author's name or names (initials last), title of book (underline, period, no quotation marks), name of publisher, address of publisher (city and state), year of publication, and page number, if applicable

2.12.2 Magazines and Journals—author's name or names (initials last), ''title of paper'' (quotation marks, comma), volume number, issue number (this may be omitted if the journal page numbers are continuous throughout the volume), date of publications, and page numbers. Example: Jones, J.J., and Smith, R.R., ''Correlation of Brinell Hardness and Tensile Strength, Materials in Design Engineering. Vol. 10, No. 2, February 1958, pp. 52–67.

2.12.3 Proceedings, Transactions, Reports, Bulletins, etc.—author's name or names (initials last), ''title of paper'' (in quotation marks), name of publication (underline, no quotation marks, comma), name of publisher, volume number, if any date of publication, and page numbers.

2.12.4 Symposium Volumes or Other Books Comprising Collections of Papers—Follow style for books, above and add title of paper, in quotes, after author's name.

2.12.5 Patents—patent number and data.

2.12.6 EPA methods—Method number and name, EPA report number, U.S. Environmental Protection Agency, laboratory and/or office, location, date.

3.0 Conventions

3.1 Capitalization, Italics, Underlining, and Boldface

3.1.1 Capitalization

3.1.1.1 For first-order headings (numbered 1.0, 2.0, 3.0, etc.), use initial capitalization of major words.

3.1.1.2 For second-, third-, or fourth-order headings, capitalize the first word of the heading only.

3.1.2 Italics—Italicize words or blocks of text for emphasis. Equations and notes interspersed in the text also should be italicized.

3.1.3 Underlining—Underline words that are defined in the Definitions section (or glossary). Use underlining in tables as appropriate for clear presentation of material. Do not use underlining for emphasis; use italics instead but avoid overuse of emphasis.

3.1.4 Boldface—Boldface the following items:

3.1.4.1 The method number and title on the cover page, title page, and page 1 of the method.

3.1.4.2 Acknowledgments, Disclaimer, and Introduction headings.

3.1.4.3 First-order headings.

3.1.4.4 Section numbering.

3.1.4.5 Equation numbers.

3.1.4.6 The word ''Note:'' preceding text notes.

3.2 Punctuation

3.2.1 Always use a comma after the second to last entry in a series.

3.2.2 A dash may be used between a subheading and text that directly follows the subheading. There should be no blank space before or after the dash, e.g., ''Matrix Spikes—The laboratory must spike...''

3.2.3 As a general rule, use a hyphen in compound modifiers to avoid ambiguity, e.g., 1–L flask. (In some cases, the hyphen can be left out without ambiguity, e.g., toxic chemical waste.) Do not use a hyphen after an adverb ending in ''ly,'' e.g., commonly accepted practice.

3.2.4 Bullets are not to be used in the body of the method. If used in introductory material, the text following the bullet should start with a capital letter. Short bullets do not require periods at the end; long (multiple-line) bullets do. Semicolons or commas should not be used after bulleted text.

3.3 Footnotes

Use footnotes only in tables. Footnotes should be designated with numbers or lower case letters in superscript, and should appear below the body of the table.

3.4 Text Notes

Notes may be used within the text to highlight important information regarding use of the method. Use a margin-to-margin line across the page both preceding and following the note to set it off from the text.

3.5 Equations

Equations should be numbered Equation 1, Equation 2, etc., consecutively as they appear in the text. Use a margin-to-margin line across the page both preceding and following

the equation to set it off from the text. Equations should be presented in italics. The equation is followed by ''where:'' and a list of terms used in the equation (e.g., where: n = number of samples, x = concentration in each sample).

3.6 Tables and Figures

Tables and figures appear in Section 17.0.

3.6.1 Number tables and figures consecutively with Arabic numerals, and give each a title that is complete and descriptive.

3.6.2 In table column headings, specify the quantity being tabulated, followed by the units of measurement shown in parentheses. For example, ''Amount spiked (µg/L)''.

3.6.3 Place table and figure titles above the information presented.

3.6.4 Figures may be enclosed in a box if desired.

3.7 Trademarks

3.7.1 Avoid the use of trademarks or brand names whenever possible. For examples, use the term ''borosilicate glass'' rather than the trademarks Pyrex or Kimax; use ''fluoropolymer'' rather than Teflon. (See Section 4.6.4.)

3.7.2 When a trademark or brand name is used, capitalize it.

3.8 Text References

Text references are references to other locations within the method, not references to any outside source. References to other sources appear in Section 16.0. Do not incorporate essential information into the method by referring to another method.

In the method text, refer to other sections of the method capitalizing the word ''Section.'' Section references should appear in parentheses at the end of the phrase or sentence to which the reference applies, for example, (Section 9.6).

3.9 Units, Symbols, Abbreviations, and Acronyms

3.9.1 Units and symbols from the international metric system (SI, from the French name, Le Système International des Unites) are to be used. SI is based on seven basic units that are dimensionally independent. The SI unit of time is the second (symbol = s) which should be used if practical. The SI unit of volume is the cubic meter (symbol = m^3) but the spectral name liter (symbol = L) can be used for liquids and gases. Although the SI unit for mass is kilogram (symbol = kg), the use of gram (g) with or without prefixes is appropriate.

3.9.2 Symbols, not abbreviations, should be used for units. Symbols are not followed by a period except when used at the end of a sentence. Unit symbols are written in lower case except for the symbol for liter (L) or where the unit name was derived from a proper name, such as Pa, from Pascal. When a quantity is expressed as a numerical value and a unit symbol, a space should be left between them, except between the number and symbol for degree Celsius (e.g., 20°C) and for degree, minute, and second of plane angle.

3.9.3 Use commonly accepted acronyms and abbreviations in text and tables. An acronym is a word formed from the first or first few letters of other words; everything else is an abbreviation. In many cases, an acronym or abbreviation is more readily identifiable than its narrative counterpart. Always spell out the term the first time it is used and follow it with the acronym or abbreviation shown in parentheses, e.g., material safety data sheet (MSDS), relative percent difference (RPD), or United States Environmental Protection Agency (EPA). Acronyms and nearly all abbreviations have no periods or spaces between letters. As depicted in these examples, although the acronym or abbreviation is capitalized, the narrative version of it is not capitalized unless it is a proper name such as a government agency, society, or association. Once an acronym or abbreviation is introduced in this manner, use only the acronym or abbreviation subsequently.

3.9.4 When a long word or phrase for which there is no standard acronym or abbreviation is used frequently, it may be replaced by an acronym or abbreviation that is explained when it first occurs. For example, relative centrifugal force (RCF).

3.10 Numerals

3.10.1 Spell out single-digit numbers (one through nine), with the following exceptions:

3.10.1.1 Use numerals when the quantity is partly fractional, e.g., 1.15, 1½.

3.10.1.2 Use numerals when the number is followed by a unit symbol, e.g., 1 m, 9%, 3 ppm. In the method text, units should be spelled out, so the numbers one through nine associated with the units would be spelled out also (e.g., one meter, nine percent, three parts per million).

3.10.1.3 Use numerals to identify equations and tables (e.g., Equation 2, Table 5).

3.10.1.4 In sentences containing multiple numbers, if some numbers must be numerals, use numerals for all (e.g., 2 tests and 16 weighings).

3.10.2 Use numerals for multiple-digit numbers (10 and above), with the following exceptions:

3.10.2.1 Do not begin a sentence with a numeral. When the numeral is spelled out, also spell out the unit following (e.g., One gram is usually sufficient.)

3.10.2.2 Spell out round numbers that are used in an indefinite sense (e.g., a hundred feet or so).

3.10.3 When a number is used as an adjective, insert a hyphen between the number and the unit symbol (e.g., 100-mL volumetric flask, 1-L sample).

3.10.4 When writing decimal numbers of value less than one, place a zero before the decimal point (e.g., 0.45 g).

3.10.5 Do not point-off numbers of four figures (1234) except in tables when they occur in a column containing numbers of more than four figures. Point-off numbers of more than four figures, using commas with no spaces (e.g., 1,325,000).

3.10.6 In expressing ranges and ratios in text, use 1 to 10 or 1:10, not 1–10. A hyphen may be used for ranges in tables.

3.11 Significant Digits

Handle numbers with careful regard for correspondence between the data accuracy and the given number of digits. The number of significant digits should neither sacrifice nor exaggerate accuracy.

3.11.1 Any digit that is necessary to define the specific value or quantity is significant and should be used. For example, when measured to the nearest 1 m, a distance may be 157 m, which has three significant figures; when measured to the nearest 0.1 m, the distance may be 157.4 m, which has four significant figures.

3.11.2 When adding or subtracting numbers with different degrees of precision, the answer should contain no digits farther to the right than the least precise number. Numbers should first be rounded to one digit farther to the right than that of the least precise number. The answer is then rounded to the same number of significant figures as the least precise number.

3.11.3 For multiplication and division, the product or quotient should contain no more significant figures than are contained in the number with the fewest significant figures.

3.11.4 Examples to distinguish the addition/subtraction and multiplication/division rules are:

Addition: 113.2+1.43=114.63, rounded to 114.6

Subtraction: 113.1 − 1.43=111.77, rounded to 111.8

Multiplication: 113.2×1.43=161.876, rounded to 162

Division: 113.1÷1.43=79.16, rounded to 79.2

Note: The product and quotient above should contain only three significant figures because the number 1.43 contains only three significant figures. The above sum and difference, however, contain four significant figures, because digits that occur to the right of the last significant in the least precise number are rounded.

3.12 Order of Magnitude

Zeros may be used to indicate a specific value or to indicate the order of magnitude of a number. For example, in the number 203,185,000, representing population rounded to thousands, the first six digits are significant. The last three digits are zeros that indicate the order of magnitude.

3.13 Rounding

3.13.1 When the first digit discarded is less than five, the last digit retained is not changed.

3.13.2 When the first digit discarded is five or greater, or when five is followed by a digit other than zero, the last digit retained is increased by one.

3.13.3 When the first digit discarded is exactly five followed only by zeros, the last digit retained is rounded upward if it is an odd number and is not adjusted if it is an even number.

4.0 Content

In accordance with EMMC format, each analytical method must contain 17 specific topical sections in a designated order. The required order and content of these sections are listed and described below. All of these sections are mandatory for all methods.

1.0 Scope and Application
2.0 Summary of Method
3.0 Definitions
4.0 Interferences

5.0 Safety
6.0 Equipment and Supplies
7.0 Reagents and Standards
8.0 Sample Collection Preservation and Storage
9.0 Quality Control
10.0 Calibration and Standardization
11.0 Procedure
12.0 Data Analysis and Calculations
13.0 Method Performance
14.0 Pollution Prevention
15.0 Waste Management
16.0 References
17.0 Tables, Diagrams, Flowcharts, and Validation Data

Starting with section 11.0 Procedure, additional numbered sections may be inserted as required by the particular method; however, the sections listed above must appear in each method in the order listed.

Note: Subsections within each of the 17 required sections do not need to correlate directly to the subsections included here. In other words, the information mentioned in 4.1.1 below might be covered in two or more subsections in a method.

4.1 Scope and Application

This section outlines the purpose, range, limitations, and intended use of the method, and identifies target analytes.

4.1.1 Define the purpose and intended use of the method. State what the method is based upon, noting any relationship of the method to other existing analytical methods. Indicate whether the method is associated with a sampling method. Include the following statement: ''This method is for use in the Environmental Protection Agency's (EPA's) data gathering and monitoring programs under the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act.''

4.1.2 List analytes that can be measured by the method, including each analyte's Chemical Abstracts Service Registry Number (CASRN). If regulations cite other than the most commonly used analyte name, refer to the regulation. For pesticides, use ''acceptable common names.'' The use of registered trade names is permitted.

4.1.3 Identify the matrix(ces) for which the method has been found satisfactory.

4.1.4 Indicate the statistically determined method detection limit (MDL) and the analyte concentration range over which the method is applicable. State the matrix(ces) in which MDL was determined. If the MDL is not available, report an instrumental detection limit and define how it was derived. Indicate the minimum level (ML) and water quality criteria if appropriate to the analyte and method.

4.1.5 Describe method limitations, such as ''This method is not applicable to saline water,'' or ''This method is not intended for determination of metals at concentrations normally found in treated and untreated discharges from industrial facilities.'' Indicate any means of recognizing cases where the method may not be applicable to the sample under test.

4.1.6 List any restrictions that may apply, such as ''This method is restricted to use by or under the supervision of analysts experienced in * * *''

4.1.7 Include the following statement regarding performance-based methods: ''This method is performance-based. The laboratory is permitted to omit any step or modify any procedure (e.g., to overcome interferences, to lower the cost of measurements), provided that all performance requirements in this method are met. Requirements for establishing method equivalency are given in Section 9.1.2.''

4.1.8 Include the following statement: ''Each laboratory that uses this method must demonstrate the ability to generate acceptable results using the procedure in section 9.1.2.''

4.2 Summary of Method

This section provides an overview of the method procedure and quality assurance.

4.2.1 Outline, specifying amounts of sample and reagent, the procedure that is followed to determine the presence or absence of the listed analytes. Include any sample pretreatment, such as filtration or digestion. In this description, identify the basic steps involved in performing the method, but omit the details that are a necessary part of the complete statement of procedure.

4.2.1.1 For chemical methods, state the type of procedure (colorimetric, electrometric, volumetric, etc.) and describe the source of color, major chemical reaction, including pertinent chemical equations, etc. For instrumental methods, state the technique.

4.2.1.2 In the ''Summary of Method'' section, use the passive voice, e.g., ''Instrumental drift is corrected by using internal standardization,'' rather than ''Correct instrumental drift by using internal standardization.''

4.2.2 Identify the determinative step in the method.

4.2.3 State in a summary fashion how quality is assured in the method.

4.2.4 List options to the method, if applicable.

4.3 Definitions

This section includes definitions of terms, acronyms, and abbreviations used in the method. If preferred, definitions may be provided in a glossary at the end of the method or manual. In this case, the definitions section must still appear in the method, with a notation that definitions are provided in a glossary at the end of the method. Refer to the specific section number of the glossary.

4.3.1 Include an introductory statement as follows: ''The definitions and purposes below are specific to this method, but have been conformed to common usage as much as possible.''

4.3.2 List units of weight and measure and their abbreviations or acronyms used in the method.

4.3.3 Alphabetically list and define terms, acronyms, and abbreviations used in the method. Where appropriate, include the purpose (e.g., the purpose of the field blank is to determine if the field or sample transporting procedures and environments have contaminated the sample).

4.3.4 Include definitions of the terms may, may not, must, and should, as follows:

4.3.4.1 May: This action, activity, or procedural step is neither required nor prohibited.

4.3.4.2 May not: This action, activity, or procedural step is prohibited.

4.3.4.3 Must: This action, activity, or procedural step is required.

4.3.4.4 Shall: This action, activity, or procedural step is required.

4.3.4.5 Should: This action, activity, or procedural step is suggested but not required.

4.4 Interferences

This section identifies known or potential interferences that may occur during use of the method, and describes ways to reduce or eliminate interferences.

4.4.1 Describe any known or potential problem(s) (e.g., sample or equipment contamination, instrument noise) that may be encountered during the performance of the method and the source of the problem(s). Recommend techniques to avoid or minimize the problem(s) (e.g., ways to reduce sample or equipment contamination, or instrument noise).

4.4.2 Identify any substances, ions, or properties that are known to or likely to cause interference and the amounts that are known to or likely to interfere. Sometimes this information can be obtained only by observation during the analysis. In such cases, include appropriate notes under ''Procedure'' or ''Data Analysis and Calculations.''

4.5 Safety

This section describes special precautions needed to ensure personnel safety during the performance of the method. Procedures described here should be limited to those which are above and beyond good laboratory practices. The section must contain information regarding specific toxicity of analytes or reagents.

4.5.1 Identify and warn analysts of potential hazards associated with using the method (e.g., toxicity or carcinogenicity of analytes or reagents, explosions, fire, radiation). Recommend techniques to minimize hazards where possible (e.g., performing operations in a hood or glove box).

4.5.2 Where the toxicity or carcinogenicity of each compound or reagent has not been precisely determined, include the following statement: ''The toxicity or carcinogenicity of each analyte or reagent has not been precisely determined; however, each chemical should be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level. It is suggested that the laboratory perform personal hygiene monitoring of each analyst using this method and that the results of this monitoring be made available to the analyst.''

4.5.3 Indicate the steps in the procedure at which hazards that could damage equipment may occur by use of the word CAUTION in boldface type, followed by the details of the precautionary measures that must be taken. If any step in the procedure could result in personal injury or death, include the word WARNING in boldface type, followed by the details of the protective measures that must be taken.

4.5.4 Include the following statements: ''This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References _____.''

4.6 Equipment and Supplies

This section lists and describes all nonconsumable supplies and equipment needed to perform the method.

4.6.1 Include the following statement as a note preceding the list of equipment and supplies:

''Note: Brand names, suppliers, and part numbers are cited for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using equipment and materials other than those specified here, but demonstration of equivalent performance that meets the requirements of this method is the responsibility of the laboratory.''

4.6.2 Categorize and list required equipment and supplies by the logical order of use; e.g., sampling equipment, equipment for glassware cleaning, equipment for calibration, equipment for sample extraction, etc. Do not list common laboratory equipment, but do include special or modified forms of unusual sizes or numbers of common equipment that are required or that may require special preparation.

4.6.3 Describe the essential features of each required item. Include schematic drawings as needed to clarify or supplement apparatus descriptions.

4.6.4 Avoid the use of trademarks, brand names, trade names, or suppliers unless a specific manufacturer's product is required for a well-defined reason or the availability of the product is limited (i.e., the apparatus is unique or unusual). For example, when special types of glassware are required, such as heat-resistant, chemical-resistant, etc., state the significant characteristic desired rather than a trademark (''borosilicate glass'' rather than Pyrex or Kimax). If only a single source is known, that supplier may be identified.

4.6.5 Whenever a brand name is used, include ''or equivalent'' following the brand name or part number to demonstrate that use of another product is acceptable.

4.6.6 Include any special glassware cleaning instructions.

4.6.7 List special facilities required, such as a special room for handling hazardous materials.

4.7 Reagents and Standards

This section lists and describes all reagents and standards required to perform the method, and provides preparation instructions and/or suggested suppliers as appropriate.

4.7.1 List the name of the reagent and the necessary purity, followed by any descriptive terms. List reagents in a logical order (e.g., by order of occurrence or use, by group). The method should require that reagents be ACS Reagent Grade unless otherwise specified.

4.7.2 Spell out the full name of inorganic reagents when first used, and include within parentheses the exact chemical formula, showing its water of crystallization, etc. Subsequently, refer to inorganic compounds by formula if they can be specified clearly in this way. As exceptions, always spell out the word ''water'' and the names of substances in their elemental state (e.g., ''lead'' not ''Pb,'' ''oxygen'' not ''0_2'').

4.7.3 Spell out organic, organometallic, or complex inorganic compounds; chemical formulae are not necessary. Cite the CASRN to avoid ambiguity.

4.7.4 Avoid the use of trademarks and names of patented products. Use chemical names and common names, unless a specific product is required for a well-defined reason. The use of registered trade names is permitted.

4.7.5 Unique and unusual reagents can be named by brand. Whenever a brand name is used, include ''or equivalent'' following the brand name to demonstrate that another product can be used.

4.7.6 Specify the concentration of inorganic reagents in applicable terms, as follows:

Concentrated acids and bases: density
Dilute acids and bases: volume ratio, x+y (x volume of reagent added to y volume by water)
Nonstandardized solutions: normality, expressed decimally; or the equivalent of 1 mL of solution in terms of grams of a given element expressed as 1 mL = x.xx g of
* * *

4.7.7 Specify filter paper by describing the significant characteristic such as porosity, rate of filtering ash content, etc., or by reference to ASTM Specification D1100 for Filter Paper for Use in Chemical Analysis.

4.8 Sample Collection, Preservation, and Storage

This section provides requirements and instructions for collecting, preserving, and storing samples.

4.8.1 Give detailed directions for collecting, filtering (if applicable), preserving, shipping, and storing samples.

4.8.2 Use preservation procedures and holding times consistent with those specified in current EPA publications or regulations and with other methods for the same analytes.

4.9 Quality Control

This section cites the procedures and analyses required to fully document the quality of data generated by the method. The required components of the laboratory's quality assurance (QA) program and specific quality control (QC) analyses are described in this section. For each QC analysis, the complete analytical procedure, the frequency of required analyses, and interpretation of results are specified.

Note: To ensure data quality, water methods must specify a comprehensive laboratory QA program. The minimum QC requirements that must be included in methods proposed at 40 CFR part 136 or part 141 are specified at 40 CFR 136.3 table IF, 136.4, 136.5 and 141.27. The method should specify QC acceptance criteria.

4.9.1 Include the following statements in the first subsection (Section 9.1): ''Each laboratory that uses this method is required to operate a formal quality assurance program (Reference _____). The minimum requirements of this program consist of an initial demonstration of laboratory capability, ongoing analyses of standards and blanks as a test of continued performance, and [complete as appropriate to the method]. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.''

''The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2.''

4.9.2 In Section 9.1, cite any options that the analyst is permitted, e.g., alternate extraction, concentration, or cleanup procedures; changes in columns or detectors. Specify that the analyst is required to repeat the required initial demonstration of laboratory capability each time a modification is made to the method. Include the following statements: ''Each time a modification is made to the method, the analyst is required to repeat the procedure in section 9.2. If the change will affect the detection limit of the method, the laboratory is required to demonstrate that the MDL (40 CFR part 136, Appendix B) is lower than the MDL for that analyte in this method, or one-third the regulatory compliance level, whichever is higher. If the change will affect calibration, the analyst must recalibrate the instrument according to section 10.'';

''Changes that degrade method performance are not allowed. If an analytical technique other than the techniques specified in this method is used, that technique must have a specificity equal to or better than the specificity of the techniques in this method for the analytes of interest.''; and

''The laboratory is required to maintain records of modifications made to this method. These records include the following, at a minimum:

—The names, titles, addresses, and telephone numbers of the analyst(s) who performed the analyses and modification, and of the quality control officer who witnessed and will verify the analyses and modification.
—A listing of analytes measured, by name and CASRN.
—A narrative stating reason(s) for the modification(s).
—Results from all QC tests comparing the modified method to this method, including:

(a) Calibration (section 10)
(b) Calibration verification (section 9.5)
(c) Initial precision and recovery (section 9.2.2)
(d) Analysis of blanks (section 9.4)
(e) Accuracy assessment (section 9.3)
(f) Ongoing precision and recovery (section 9.6)

—Data that will allow an independent reviewer to validate each determination by tracing the instrument output (weight or

other signal) to the final result. These data are to include:

(a) Sample numbers and other identifiers
(b) Extraction dates
(c) Analysis dates and times
(d) Analysis sequence/run chronology
(e) Sample weight or volume
(f) Extract volume
(g) Make and model of analytical balance and weights traceable to NIST
(h) Copies of logbooks, printer tapes, and other recordings of raw data
(i) Data system outputs, and other data to link the raw data to the results reported

4.9.3 In the remainder of section 9.1, outline the QC requirements that will be described in the section, and the purpose for each type of QC (e.g., blanks, matrix spikes/matrix spike duplicates, calibration verification).

4.9.4 In section 9.2, describe in detail the initial demonstration of laboratory capability.

4.9.5 Describe the procedure for matrix spikes, calculating percent recoveries, and calculating relative percent difference for duplicates.

4.9.6 Provide instructions for analysis of blanks, e.g., laboratory reagent blanks, method blanks.

4.9.7 Specify requirements for calibration verification.

4.9.8 Provide instructions for analysis of ongoing precision and recovery standards.

4.9.9 Include requirements for analysis of quality control samples (QCS).

4.9.10 Include the following statement at the end of section 9.0: ''Depending upon specific program requirements, field replicates and field spikes of the analytes of interest into samples may be required to assess the precision and accuracy of the sampling and sample transporting techniques.''

4.10 Calibration and Standardization

This section describes the method/instrument calibration and standardization process, and required calibration verification. Corrective actions are described for cases when performance specifications are not met.

4.10.1 Specify operating conditions or refer to manufacturer's recommended operating conditions. If appropriate, specify a precalibration routine as needed to document instrument stability.

4.10.2 Give detailed instructions for the use of standards to prepare calibration lines or tables. Include the number of calibration standards, the need for blanks, the frequency of calibration checks, the critical range, etc.

4.10.3 Give detailed instructions for internal standardization, including number and concentration of internal standards.

4.10.4 Include instructions for calibration data storage.

4.11 Procedure

This section describes the sample processing and instrumental analysis steps of the method, and provides detailed instructions to analysts.

4.11.1 For methods used for determination of a method-defined analyte, include the following statement in the introductory portion of Section 11.0 Procedure: ''This method is entirely empirical. Acceptable results can be obtained only by strict adherence to all details.'' Do not include this statement in methods for which the analyte is a chemical or physical parameter, the characteristics of which are known (e.g., oil and grease, COD, BOD).

4.11.2 Include in proper sequence detailed directions for performing the analysis.

4.11.2.1 Include steps that are essential to the process and avoid unnecessarily restrictive instructions.

4.11.2.2 Organize the procedure by logical order of activity, e.g., sample preparation, extraction, analysis.

4.11.2.3 Describe the procedure in the imperative mood, present tense, e.g., ''Heat the sample aliquot,'' rather than ''The sample aliquot should be heated.'' Comments and descriptive information that are not in the imperative mood may be included, as appropriate.

4.11.2.4 Write the text so that it is concise and easily understandable.

4.11.2.5 When alternative procedures are given, state which is preferred.

4.11.3 In chemical methods, specify the size of sample aliquot and indicate the required measurement accuracy. (There is no need to weigh a sample to five significant figures in a spectrophotometric method where the final absorbance measurement yields data with only three significant figures).

4.11.4 Include ''Notes'' throughout the procedure to highlight critical points. Include notes of ''WARNING'' or ''CAUTION'' as appropriate to identify known or potential hazards to the analyst or the equipment, respectively.

4.11.5 Indicate steps in which timing is critical, e.g., if a determination may not be interrupted overnight. For a color reaction, indicate how long the color is stable.

4.12 Data Analysis and Calculations

This section provides instructions for analyzing data, and equations and definitions of constants used to calculate final sample analysis results.

4.12.1 Calculations—Provide directions for calculating the results of the analysis, including any equations.

4.12.1.1 Use the imperative mood, e.g., ''Report results to three significant figures,'' rather than ''Results should be reported to three significant figures.''

4.12.1.2 Where there may be ambiguity of meaning, spell out names in the text (e.g., total Kjeldahl nitrogen) but use the abbreviations (e.g., TKN) in text where the meaning is clear, and in equations.

4.12.1.3 Define the symbols used in the equation immediately under the equation.

4.12.1.4 Use numerical values for any constants. Identify dilution factors, titration factors, etc.

4.12.2 Reporting Results

4.12.2.1 Indicate the units in which the results are to be reported (e.g., ≥g/L, mg/kg).

4.12.2.2 If the sample is a solid material such as a sediment or sludge, indicate whether results are to be reported as wet weight or dry weight.

4.12.2.3 Specify the number of significant figures to be reported.

4.12.2.4 Require that all values obtained by various QC procedures are reported along with the calculated results of the analysis.

4.12.3 Interpretation of results—Use this heading in place of Calculations when the results of the analysis must be expressed in descriptive form, relative terms, or abstract values. List and define the descriptive terms or classifications used.

4.13 Method Performance

This section provides method performance criteria for the method, including precision/bias statements regarding detection limits and source/limitations of data produced using the method.

Note: Requirements for validating new methods are specified in [cite the volume and page number of the **Federal Register** in which the streamlining initiative is promulgated].

4.13.1 Explain how the method was validated. Provide a detailed description of method performance, including data on precision, bias, detection limits (including the method by which they were determined and matrices to which they apply), and statistical procedures used to develop performance specifications.

Note: This information can be provided through reference to the method validation study.

4.13.2 At a minimum, state single-operator precision and accuracy on reagent water. If other sample types have been investigated, also provide this information for them.

4.13.3 If a collaborative study has been completed, describe the study and report the number of participating operators and laboratories, spike concentrations, level of replication, types of background waters, and any other significant aspects. If the study has been documented, cite the study report and include it in the References section. When citing reference documentation, the details of the study do not have to be included in this section.

4.14 Pollution Prevention

This section describes aspects of the method that minimize or prevent pollution known to be or potentially attributable to the method.

4.14.1 Cite potential sources of pollution attributable to the method.

4.14.2 Recommend ways to minimize pollution.

4.15 Waste Management

This section describes minimization and proper disposal of waste and samples.

4.15.1 Include the following statement as the first subsection: ''It is the laboratory's responsibility to comply with all federal, state, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restrictions, and to protect the air, water, and land by minimizing and controlling all releases from fume hoods and bench operations. Compliance with all sewage discharge permits and regulations is also required.''

4.15.2 Provide instructions for sample and waste handling and disposal.

4.15.3 Include the following statement as the last subsection: ''For further information on waste management, consult The Waste Management Manual for Laboratory Personnel and Less is Better: Laboratory Chemical Management for Waste Reduction, both available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW., Washington DC, 20036.''

4.16 References

This section lists references for source documents and publications that contain ancillary information.

Note: Each method should be a free-standing document, providing all information necessary for the method user to perform the method may be found. References within a method should be restricted to associated or source material. Procedural steps or instructions should not be referenced as being found elsewhere, but should be included in total within the method.

4.16.1 Include references for other, related EPA methods; and published studies/articles relating to method performance, techniques, or analytes, and health and safety.

4.16.2 List references in the order cited in the method, and assign each reference an identification number using Arabic numerals.

4.16.3 As a rule, do not list documents that are not readily accessible to the reader (e.g., unpublished theses, personal communications, private correspondence). If it is important to list these types of documents, identify where the reader may obtain a copy of the document.

4.17 Tables, Diagrams, Flowcharts, and Validation Data

This section contains all method tables and figures (diagrams and flowcharts), and may contain validation data referenced in the body of the method.

4.17.1 In addition to tables and figures, include additional useful information. Examples of such information include:

4.17.1.1 Notes on significance and interpretation of the method, used to amplify the statement in the text.

4.17.1.2 Development of equations used in the calculations.

4.17.1.3 Charts or supplementary information for computations.

4.18 Glossary

This optional section contains a glossary of terms, acronyms, abbreviations, and symbols used in the method.

Note: This information may appear in the Definitions section of the method (Section 3.0) or may be included in a glossary at the end of the method.

4.18.1 In the first subsection of the glossary, identify units of weight and measure used in the method and their abbreviations.

4.18.2 In the second subsection, define key terms and all acronyms used in the method.

4.18.2.1 List terms, acronyms, and abbreviations alphabetically.

4.18.2.2 Definitions should appear only once. Where an acronym or abbreviation represents a term that is defined under its full name, reference the full name as the definition for acronym or abbreviation.

Appendix G to Part 136—Method Flexibility, Equivalency and Approval

Section 1 of this appendix defines the analyst's flexibility to modify certain steps in a reference method. Section 2 specifies requirements for assessing the equivalency of a method modification. Section 3 specifies requirements for submitting method modifications or new methods for approval.

1.0 Method Flexibility

This section specifies requirements for exercising method flexibility (i.e., ''allowable'' method modifications). Under requirements specified at 40 CFR 136.4 and 141.27(b), an analyst is allowed to modify a reference method without seeking formal approval through the regulatory process provided the modification is not explicitly forbidden in the reference method and provided the analyst demonstrates and documents that the modified method produces results that are equal or superior to results produced by the reference method. An EPA-designated reference method that contains (or is supplemented with) QC acceptance criteria against which to measure performance of a method modification is the primary control used to ensure data quality. Other controls include specific multi-laboratory and multi-matrix requirements for validating modified methods (as specified at 40 CFR 136.4, 136.5(d), 141.27 (b) and (e)) checklists for documenting equivalency (as specified at Appendix E of this part).

The QC elements and associated QC acceptance criteria (e.g., calibration, sensitivity, accuracy, precision) necessary to demonstrate the equivalency of a modified method to a reference method are defined at 40 CFR 136.2 and 141.2 and specified at 40 CFR 136.3 Table IF, 136.4, 141.27 (b) and (d).

1.1 Types of Method Modifications

There are two types of method modifications:

1.1.1 Explicit modifications to approved methods may be made as explicitly specified within those methods. Explicit flexibility exists for all approved methods including EPA, Standard Methods, ASTM, AOAC-International, and other methods approved at 40 CFR parts 136 and 141.

1.1.2 Allowable modifications beyond those explicitly allowed in an approved method that has been designated as a reference method are allowed provided that the modification meets the requirements specified in this appendix, at 40 CFR 136.4, 136.5(d) or 141.27(b) and (e), and at Appendixes E, F, and G of this part. Allowable modifications do not apply to Standard Methods, ASTM, and AOAC-International methods, none of which have been designated as reference methods.

1.2 Controls on Allowable Modifications (Method Flexibility)

The controls on method flexibility are:

1.2.1 A requirement to demonstrate and document equivalency when method modifications are used.

1.2.2 Designation of a reference method that contains (or is supplemented with) QC acceptance criteria for use in demonstrating equivalency.

1.2.3 Standard procedures for validating new methods and demonstrating equivalency of method modifications, based on the intended use of the method.

1.2.4 Detailed requirements for preparing the method validation package and supporting data when new or modified methods are validated.

1.2.5 Requirements for assessing equivalency of method modifications.

1.3 Reference Method

All methods approved for use at 40 CFR parts 136 and 141 have been categorized as either a ''reference method'' or an ''other approved method''; both types of methods carry equal regulatory status. The difference between the methods is that the reference method contains (or is supplemented with) detailed QC acceptance criteria that are required to assess the equivalency of an allowable method modification.

A reference method is specified at 40 CFR 136.3, 141.23(k), 141.24(e) and 141.40(n). For some determinative techniques, no currently approved method contains either all of the QC acceptance criteria proposed in today's rule (e.g., Table ID in 40 CFR part 136) or sufficient data from which to develop such criteria. In these cases, no reference method has been designated; therefore, all of these methods are classified as other approved methods. Without a reference method, analysts are not allowed to modify approved methods that use that determinative technique.

Only one reference method is designated for each unique combination of analyte and determinative technique to avoid the possible confusion if two or more reference methods contained different QC acceptance criteria. The QC acceptance criteria associated with the reference method are the sole criteria against which a method modification is tested.

1.4 Categories of Allowable Method Modifications

The four categories of allowable method modifications are (1) sample collection and holding procedures, (2) front-end techniques, (3) determinative techniques, and (4) analyte addition. These categories are defined below and described in terms of allowed flexibility to modify the procedures or techniques included in each category.

The first category, sample collection and holding procedures, includes procedures and reagents used in the field, in transit, and at the laboratory. This category includes sample containers, sample holding times, preservation reagents and procedures, and shipping and storage procedures and conditions. Requirements for modifying sample collection and preservation conditions are specified at 40 CFR 136.3(c) and 141.27(b).

Front-end techniques, the second category of method modifications, include any step in the analytical process used at the laboratory that precedes the determinative technique and includes all procedures, equipment, solvents, etc., that are used to prepare a sample for analysis. The third category is the determinative technique, which is defined as

the physical and/or chemical process by which an analyte is identified and its concentration measured. For most methods, the determinative technique consists of an instrumental measurement (e.g., a detector). The fourth category covers increasing the analytical scope of a reference method to include additional analytes.

A person may modify any and all front-end techniques in the reference method, provided the modification is not explicitly prohibited in the reference method and provided the analyst demonstrates and documents that the modification produces results equal or superior to results produced by the reference method. The person must keep on file the documents that demonstrate equivalency. Method developers are cautioned that modifications to the front-end chemistry of the method (e.g., extraction solvents, solvent-to-sample volumes, extraction media, and pH) require a thorough understanding of the measurement science that was used to develop and validate the reference method. The developer of a modified method may ask EPA or another regulatory authority for a technical opinion on the acceptability of the validation data that supports the method modification(s).

A reference method may be modified to allow use of an alternate determinative technique that is not explicitly prohibited in the reference method, provided that equivalency with the reference method performance is demonstrated and documented, and provided that four conditions are met: (1) the alternate determinative technique must measure a property similar to the prescribed technique, (2) the alternate technique must be demonstrated to be more specific (i.e., provides better separation of the analyte from interferences) and/or more sensitive (i.e., produces a lower detection limit) for the analyte of concern than the determinative technique in the reference method, (3) there is not another approved method that uses the alternate determinative technique for the determination of that analyte, and (4) use of the alternate determinative technique would not result in a nonsensical combination of analyte, front-end technique, and determinative technique.

Examples of allowed changes to a determinative technique are substitution of a photoionization detector for a flame ionization detector for determination of polynuclear aromatic hydrocarbons, substitution of a nitrogen-phosphorous detector for an electron capture detector (ECD) for determination of analytes containing nitrogen or phosphorous, and substitution of a fluorescence detector for an ultraviolet or visible wavelength detector. Substitution of a mass spectrometer (MS) for an ECD would not be allowed if there is an approved MS method that measures the analyte of concern.

Modifications to the determinative technique are limited by the four conditions described above to preclude nonsensical combinations of analyte and determinative technique, to encourage a net benefit (increased sensitivity and/or specificity), and to preclude multiple reference methods with the same determinative technique but with different QC acceptance criteria for the same analyte(s) of concern. For example, if a mass spectrometer were substituted for the conventional detectors in EPA Methods 601—612, all of these methods would become GC/MS methods, but all would contain different QC acceptance criteria. Further, they would all conflict with approved EPA GC/MS Methods 625 and 1625. Another reason for limiting changes to the determinative technique is that there are techniques, such as immunoassay, for which EPA has no reference method and therefore no history to ensure that the standardized QC proposed in today's rule would be germane to, or adequate for, assurance of the quality of data produced by the novel determinative technique. A new method must be written and submitted to EPA for approval when a novel determinative technique is developed.

An analyst may add a new target analyte to a reference method provided (1) it is demonstrated that the analyte does not interfere with determination of the analytes of concern in that method, (2) QC acceptance criteria are developed and employed for determination of the target analyte, (3) there is not another approved method that uses the same determinative technique for that analyte, and (4) that the reason for adding the analyte is not to avoid the sample preservation or sample (or extract) holding time conditions that are already required for that analyte in another approved method. The third and fourth conditions preclude ''method shopping'', whereby an analyst might add analytes to a reference method with less rigid QC acceptance, sample collection, or holding time criteria. Thus, if a reference method for an analyte of concern required acidification of the sample, an analyst does not have the flexibility to modify a method that does not require sample acidification to include analysis of the analyte of concern. Modifications of this type require EPA approval as a new method.

If QC acceptance criteria do not exist to allow addition of a new analyte, the requirements specified at 40 CFR part 136 Appendix E, and at 40 CFR 136.4, 136.5, and 141.27 must be used to develop and obtain approval for these criteria. Alternatively, QC acceptance criteria for the new analyte could be transferred from the criteria for an analyte with similar chemical characteristics in the same method or from the criteria for the analyte in another approved method.

1.5 Method-Defined Analytes

Some techniques may not produce results equivalent to results produced by techniques employed for ''method-defined analytes''. A method-defined analyte is an analyte that does not have a specific, known composition so that the analytical result depends totally on how the measurement is made. Therefore, a change to either the front-end steps or the determinative technique for a method-defined analyte has the potential of changing the numerical value of the result for a given sample. Examples of method-defined analytes include adsorbable organic halides (AOX), biochemical oxygen demand (BOD), total radioactivity, and whole effluent toxicity (WET).

Until the nature and extent of allowable flexibility for method-defined analytes is defined by EPA, these methods may not be modified using the requirements specified in this section unless the modified method is reviewed and approved by EPA. A person may attempt to demonstrate that the new technique produces results that are equivalent to the reference method on a matrix-by-matrix basis. When these data are submitted to EPA, EPA will work with the method developer to determine whether the submitted combination of analyte and determinative technique is new and whether a new method for a method-defined analyte is desirable.

1.6 New Methods, Screening Methods, and Modified Methods This section clarifies the differences between new and modified methods and the requirements that pertain to each. This section also describes how screening methods might be approved in the future for compliance monitoring under the CWA and the SDWA.

A new method is a set of procedures that:

(1) Is documented in accordance with the requirements detailed as specified at Appendix F of this part,

(2) Contains the standardized QC elements defined at 40 CFR 136.2 and 141.2,

(3) Contains QC acceptance criteria that have been developed in accordance with the requirements at 40 CFR 136.5 and 141.27(c),

(4) Employs a determinative technique for an analyte of concern that differs from determinative techniques employed for that analyte in methods previously approved at 40 CFR part 136 or 141, and

(5) Employs a determinative technique that is more sensitive and/or selective (specific) than the determinative techniques in all methods previously approved for the analyte.

Methods that meet all five of these characteristics are considered to be definitive methods, if the method also is sufficiently selective and quantitative that most positive results do not have to be verified by analysis with another method. The term ''definitive'' is used to distinguish these methods from screening methods. All methods currently approved at 40 CFR parts 136 and 141 are definitive methods.

In this appendix, a screening method is defined as a method that meets the first four of the five conditions described above for new methods and that has been demonstrated to produce a false negative probability of no more than one percent (1%) at the limit(s) of regulatory concern. Methods can fail the fifth condition for a new method, if they are non-selective or not quantitative for the target analyte. A non-selective method is a method in which the determinative (or other step) technique in the method may produce a result for any one of several analytes that share common physical or chemical characteristics with the target analyte. For example, an atrazine immunoassay might respond to any triazine (atrazine, simazine, cyanazine) pesticide in the sample.

In the future, screening methods may be considered for approval as compliance monitoring methods provided: (1) the method meets all the requirements described in the regulations at 40 CFR 136.5 and 141.27(c), (2) all positive sample results obtained with the method are confirmed and

reported using an approved definitive method, and (3) the probability of the method producing a false negative result at concentrations of regulatory interest is no more than one percent (1%). For part 141 approval, these criteria may be amended when the Agency implements the requirements for screening methods that are in the August 2, 1996 amendments to the SDWA.

2.0 Assessing Method Equivalency

This section provides requirements for assessing the equivalency of a method that has been modified according to the requirements specified at 40 CFR 136.4, 136.5(d), 141.27 (b) and (e). Analysts and regulatory authorities may use these equivalency requirements to verify and document that equivalent or better method performance relative to the reference method has been achieved and documented by the laboratory using the method modification. This section also specifies requirements for documenting the performance of new methods and method modifications.

Good communication among analytical laboratories, regulated entities, and regulatory authorities is essential for the method modification assessment process. Although many compliance monitoring analyses are performed by contract laboratories on behalf of the regulated entity, the responsibility for maintaining validation documentation for new and modified methods rests with the regulated entity. Regulated entities, therefore, must inform their contract laboratories about the requirements for detailed documentation of method modifications.

2.1 Requirements for Documenting Validation of New and Modified Methods

Although validation requirements vary depending on the intended use of the new or modified method, the documentation requirements are the same. A validation study report must be prepared for every study conducted to validate new or modified methods. The primary basis for documenting method validations studies are the Checklist for Initial Demonstration of Method Performance, the Checklist for Continuing Demonstration of Method Performance, and the Certification Statement (collectively called the ''Checklists''). The Checklists must be used by auditors, drinking water laboratory certification officers, and other reviewers to evaluate new methods and method modifications against reference methods promulgated at 40 CFR parts 136 and 141.

The Checklists and instructions for their completion are provided at Appendix E in this part. Regulated entities must make the Checklists available to the contract laboratories to document method modifications. In turn, contract laboratories are responsible for returning validation study reports including completed Checklists to the regulated entities.

The data reviewer should verify that all validation and documentation requirements appropriate to the intended tier of the new or modified have been met as specified at 40 CFR 136.4, 136.5(d), 141.27 (b) and (e). For Tier 1 method modifications, the completed Checklists are adequate to document method equivalency. For all other validation tiers, the data reviewer must ensure that the validation study report is complete and includes all supporting raw data. The following sections must be included in the report:

2.1.1 A background section that describes the method and the responsible organization.

2.1.2 A section that describes the study design and objectives.

2.1.3 A section that describes the study methodology and implementation

2.1.4 A section that describes the procedures that were used to report and validate data.

2.1.5 A results section. (Note: Since different instruments provide different data, the specific form of the supporting analytical data will differ according to the method. For example, gas chromatography/mass spectrometry procedures produce chromatograms, while colorimetric determinations do not.)

2.1.6 A section for a discussion of the study results.

2.1.7 A section that describes conclusions from the study.

2.1.8 An appendix that contains the Checklists.

2.2 Data Review Guidance for EPA Water Methods

This section provides guidance for reviewing data submitted to EPA and state authorities under CWA and SDWA. The guidance provides a tool for authorities who want to perform detailed inspection of data analyzed by methods under 40 CFR parts 136 and 141. The material presented in this section is technically detailed and is intended for data reviewers familiar with analytical methods.

2.2.1 Standardized Quality Assurance/ Quality Control

Standardized QA/QC is specified for each reference method and contains the following elements:

2.2.1.1 Calibration linearity.

2.2.1.2 Calibration verification.

2.2.1.3 Absolute and relative retention time precision (for chromatographic analyses).

2.2.1.4 Initial precision and recovery or ''start-up'' tests.

2.2.1.5 Ongoing precision and recovery.

2.2.1.6 Analysis of blanks.

2.2.1.7 Surrogate or labeled compound recovery.

2.2.1.8 Matrix spike and matrix spike duplicate precision and recovery (for non-isotope dilution analyses).

2.2.1.9 Demonstration of method detection limits.

2.2.1.10 Analysis of reference sample.When reviewing method validation data, the permit writer, PWS, or other individual or organization has the authority and responsibility to ensure that the test data submitted contain the elements listed above; otherwise, the data can be considered noncompliant.

2.2.2 Details of Data Review

The details of the data review process depend to a great extent upon the specific analytical method. Even for data from the same method, there may be many approaches to data review. However, given the standardized QC requirements of the streamlined methods approval program, a number of basic concepts apply. The following sections provide the details for reviewing data submitted and a rationale for the QC tests. Results from all QC tests must be within the QC acceptance criteria specified in, or associated with, the reference method to validate that results produced by a method modification are equivalent or superior to results produced by the reference method.

2.2.2.1 Calibration linearity

The relationship between the response of an analytical instrument to the concentration or amount of an analyte introduced into the instrument typically is represented by an averaged response or calibration factor, a calibration line, or a calibration curve. An analytical instrument can be said to be calibrated in any instance in which an instrumental response can be related to a single concentration of an analyte. The response factor or calibration factor is the ratio of the response of the instrument to the concentration (or amount) of analyte introduced into the instrument.

Nearly all analytical methods focus on the range over which the response is a linear function of the concentration of the analyte. This range usually extends from the minimum level of quantitation (ML) on the low end to the point at which the calibration becomes non-linear on the high end. For regulatory compliance, it is important that the concentration of regulatory interest (e.g., permit limit; MCL) fall within this range. Calibration can also be modeled by quadratic or higher order mathematical functions. The advantage of a calibration line that passes through the origin is that an averaged response factor or calibration factor can be used to represent the slope of this line. Use of a single factor simplifies calculations and the interpretation of the data. Also, it is easier to discern when an inaccurate calibration standard has been prepared if the calibration function is a straight line.

Many analytical methods, particularly recent methods, specify some criterion for determining the linearity of the calibration. When this criterion is met, the calibration function is sufficiently close to a straight line that passes through the origin to permit the laboratory to use an averaged response factor or calibration factor. Linearity is determined by calculating the relative standard deviation (RSD) of the response factor or calibration factor for each analyte and comparing this RSD to the limit specified in the method. If the RSD does not exceed the specification, linearity through the origin is assumed. If the specification is not met, a calibration curve must be used.

For whatever calibration range is used, a reference method should contain a specification for the RSD of the response or calibration factor to establish the breakpoint between linear calibration through the origin and a line not through the origin or a calibration curve. For new methods, the method developer must provide the RSD results by which one can judge linearity, even in instances where the laboratory is using a calibration curve. In instances where

the laboratory employs a curve rather than an average response or calibration factor, the data reviewer should review each calibration point to ensure that the response increases as the concentration increases. If it does not, the instrument is not operating properly, or the calibration curve is out of the range of that instrument, and data are not considered valid.

2.2.2.2 Calibration Verification

Calibration verification involves the analysis of a single standard at the beginning of each analytical shift or after the analysis of a fixed number of samples (e.g., 10). The concentration of each analyte in this standard is normally at the same level as in one of the calibration standards, typically at 1—5 times the ML. The concentration of each analyte in this standard is calculated using the calibration data. The calculated concentration is compared to the concentration of the standard. Calibration is verified when the concentration is within the calibration verification limits specified in the method. If the results are within the specifications, the laboratory is allowed to proceed with analysis without recalibrating and allowed to use the calibration data to quantify the sample concentration or amount of each analyte in samples, blanks, and QC tests.

If calibration cannot be verified, the laboratory may either recalibrate the instrument or prepare a fresh calibration standard and make a second attempt to verify calibration. If calibration cannot be verified with a fresh calibration standard, the instrument must be recalibrated. If calibration is not verified, subsequent data are considered to be invalid until the instrument is recalibrated.

2.2.2.3 Absolute and Relative Retention Time Precision

Retention time specification aid in the identification of analytes in chromatographic analyses. In some methods, a minimum retention time is specified to ensure adequate separation of analytes in complex mixtures. If retention time QC criteria cannot be verified, chromatographic identification of analytes is suspect and reanalysis is necessary.

2.2.2.4 Initial Precision and Recovery

The laboratory must demonstrate that it can meet the IPR QC acceptance criteria in the method. This test is required prior to the use of the method by a laboratory. It is sometimes termed the ''start-up test.'' Difficulty in passing the start-up test frequently leads to marginal performance by the laboratory in the routine operation of the method. Performing the start-up test ''after the fact'' or after samples have been analyzed is not acceptable.

The start-up test consists of spiking the analytes of interest into a set of four or more aliquots of a reference matrix and analyzing these four aliquots. The reference matrix simulates the medium being tested. A separate IPR test must be performed for each medium. The mean concentration and the standard deviation of the concentration are calculated for each analyte and compared to QC acceptance criteria in the method. If the mean and standard deviation are within the limits specified, the analysis system is in control and the laboratory can use the system for analysis of blanks, field samples, and other QC tests samples. For some methods (e.g., EPA Methods 625 and 1625), a repeat test is allowed because of the large number of analytes being tested simultaneously.

If there are no start-up test data, or if these data fail to meet the QC acceptance criteria in the method, all data produced by that laboratory using that method are not considered valid. It is important to remember that if a change is made to a method, the start-up test must be repeated with the change as an integral part of the method. Such changes may involve alternative extraction, concentration, or cleanup processes; alternative GC columns, GC conditions, or detectors; or other procedures designed to address a particular matrix problem. If the start-up test is not repeated when a procedure is changed, added, or deleted, data produced by the modified method are considered invalid.

2.2.2.5 Ongoing Precision and Recovery

An ongoing precision and recovery (OPR) standard (also termed a ''laboratory control sample'' (LCS) or a ''laboratory fortified blank'' (LFB)) must be analyzed with each sample batch prior to the analysis of a blank, sample, or matrix spike or duplicate. The number of samples in the batch is usually 10 or 20, depending on the method, or the OPR is required at the beginning of an analysis shift, regardless of the number of samples analyzed during that shift. The data reviewer must determine if the OPR standard has been run with each sample batch or at the beginning of the shift and if all criteria have been met. If the standard was not run with a given set of samples, or if the criteria are not met, the results for that set of samples are considered invalid.

2.2.2.6 Analysis of blanks

Blanks must be analyzed either on a periodic basis or with each sample batch, depending on the method. Blanks may contain contamination at levels no higher than specified in the method. Samples associated with a contaminated blank must be reanalyzed.

2.2.2.7 Surrogate or Labeled Compound Recovery

Surrogate or labeled compounds are used to assess the performance of the method on each sample. Recoveries of these compounds from each sample must be within QC acceptance criteria to demonstrate acceptable method performance on the sample. If the recovery is not within the criteria, the sample is normally diluted and the dilute sample analyzed to demonstrate that a matrix effect precluded reliable analysis of the undiluted sample.

2.2.2.8 Matrix Spike and Matrix Spike Duplicate

Non-isotope dilution methods require a spike of the analytes of interest into a separate aliquot of the sample for analysis with the sample. The purpose of the matrix spike (sometimes termed a ''laboratory fortified sample matrix'' (LFM)) is to determine if the method is applicable to the sample in question. While many of the approved methods were tested using effluents from a wide variety of industries, samples from some sources may not yield acceptable results. It is, therefore, important to evaluate method performance in the sample matrix of interest. If the recovery for the MS/MSD is not within the QC acceptance criteria, a matrix interference may be the cause. The sample is usually diluted and the diluted sample spiked and analyzed. If the QC acceptance criteria are met with the diluted MS/MSD, a matrix problem exists. Cleanup and other processing of the sample are then required to overcome the matrix interference if analysis of the undiluted sample is required to establish compliance.

2.2.2.9 Demonstration of Method Detection Limits

A laboratory that wishes to use a new or modified wastewater method must demonstrate that the method detection limit (MDL) specified in the reference method can be achieved. Alternatively, if the regulatory wastewater compliance limit is above the MDL, laboratories must demonstrate that the minimum level (ML) determined with the new or modified method is at or below ⅓ the compliance limit. A laboratory that wishes to use a new or modified drinking water method must demonstrate that the MDL determined with that method meets the detection limits specified at 40 CFR parts 141.23, 141.24 and 141.89 and/or as specified at 40 CFR 141.27(d). For both drinking water and wastewater determinations, demonstration of a valid detection limit requires use of an MDL study in accordance with the procedure at 40 CFR part 136 Appendix B. If the MDL determined with the new or modified method is not acceptable, the method may not be used because the laboratory has not demonstrated an ability to detect the analyte at the level required.

Note: Required detection limits specified in regulations and/or in the reference method(s) are usually analyte-specific; for the same analyte, the requirement may differ between the wastewater and the drinking water reference method.

2.2.2.10 Reference Sample Analysis

Provided such acceptance limits are specified by EPA or other regulatory authorities, a laboratory must be able to demonstrate the ability to quantitate the analyte in a reference material to within the acceptance range specified for the reference material. Currently, EPA specifies at 40 CFR 141.23, 141.24 and 141.89 acceptance limits for analysis of performance evaluation (PE) samples that are provided by EPA under the drinking water studies (WS) PE-sample program.

3.0 Method Approval Process

Use of the procedures specified in this section will expedite the approval of drinking and wastewater methods by ensuring that methods submitted to EPA for approval contain the appropriate elements, have been validated, and contain all supporting documentation. This section details procedures for preparing and submitting method documentation, and describes the rulemaking process required to

approve a new method or method modification. All new wastewater and drinking water methods are subject to EPA review. New methods recommended for approval will be subject to one of two actions: an approval letter or an Agency rulemaking. Tier 1 new methods will receive a letter of approval from EPA/EAD. Tier 2 and 3 new methods will be approved in a formal rulemaking. Rulemaking involves publishing in the **Federal Register** a proposed rule containing the method(s) for public comment, responding to public comment, and approving the method(s) in a final rule. The approved method(s) will be cited in the applicable parts of the CFR. The text of the approved method(s) will be incorporated by reference rather than published in the CFR. The method submitter will be responsible for developing, writing, and validating the method; providing information in a format suitable for a proposed rule; providing the necessary supporting documentation; and assisting EPA in responding to public comments to support approval. EPA will review the method and supporting documents, draft the regulatory language, and submit the proposed rule to the Office of the Federal Register (OFR) for publication in the **Federal Register**. New methods must undergo the processes detailed above; no other types of action will be substituted.

Method modifications can be used directly after the method validation study confirms method equivalency. EPA, only upon request, will review Tier 2 and Tier 3 method modifications. The option to request EPA review of a modified method is provided to allow interested parties to substantiate EPA approval of a method modification. Any party associated with method modification and/or development can request review, including: permittees, publicly owned treatment works (POTWs), public water systems (PWSs), commercial laboratories, vendors, or States. Upon determination that a method modification is appropriate, EPA either will issue a letter of approval or conduct a rulemaking, whichever action is requested by the method submitter. The text of the approved method(s) will be incorporated by reference rather than published in the CFR. The method submitter will be responsible for developing, writing, and validating the method; providing information in a format suitable for a proposed rule; providing the necessary supporting documentation; and assisting EPA in responding to public comments to support approval. EPA's role will be to review the method and documentation; to write the rule language; and to submit the rule to the OFR, if appropriate.

3.1 Pre-Submission Procedures

EPA must review all new methods, and will review Tier 2 and Tier 3 method modifications upon request. Prior to EPA review, a party developing a new or modified method will proceed through up to four steps: (1) method development, (2) method validation, (3) information in a format suitable for proposal in the **Federal Register** (if appropriate), and (4) submission to EPA.

3.1.1 Method Development

Any person can develop a new method or method modification if they identify a new or improved procedure or technique for analyzing an analyte of interest. A new method must be a unique combination of analyte and determinative technique, as discussed in Section 1. Otherwise, it would qualify as a modification of an existing method. The method development process will typically include drafting, checking, and modifying testing procedures. Once the person has confidence in the new or modified testing procedures, the procedures should be finalized into a standardized format. The method description should identify the anticipated application of the new procedures: single laboratory; multi-laboratory, single matrix type; or multi-laboratory, multiple matrix types.

The requirement to provide the method in standard format is needed to preclude confusion. Specific details on the standard format for the new or modified method can be found at Appendix F of this part. Appendix F specifies the analytical methods format developed by EPA's Environmental Monitoring Management Council (EMMC). The EMMC format is directed at standardizing all Agency analytical methods.

For new methods submitted for approval at 40 CFR part 136 or part 141, a format from another organization may be used provided that it is standardized and contains the same elements specified in the Method Guidelines and Format. For example, the method format documents from Standard Methods, ASTM, AOAC-International, or USGS are acceptable because these formats are documented and routinely followed by these organizations. However, method submitters other than these organizations must use the EPA format specified at Appendix F of this part. Reserving method formats for those specific organizations avoids misleading the analytical community concerning the authorship of the method. EPA will review and approve standardized formats from governmental authorities and industrial associations upon request, but will not approve miscellaneous formats written by instrument manufacturers, individual laboratories, and others because of the potential proliferation of different method formats. The format provided in Appendix F of this part meets the needs of a format for new methods.

3.1.2 Method Validation

Each new method or method modification must be tested to assess its performance. The process of establishing or substantiating method performance is called validation. To approve a new method or method modification, EPA must be provided with a report describing and including results of the validation study. When undertaking method validation, the method submitter is responsible for performing the validation study at the appropriate tier as specified at §§ 136.4, 136.5 and 141.27. The study will be detailed in a method validation report submitted to EPA that includes the required Checklists and Certification Statement as specified at Appendix E of this part.

For new methods, QC acceptance criteria must be included in the method and the details of development of these criteria must be included in the validation report. QC acceptance criteria are used to ensure that a method produces results that are reliable, defensible, and suitable for regulatory decisions. QC acceptance criteria must be developed from data gathered in a method validation study. When an analyte is being added to an approved method, however, QC acceptance criteria may be (1) developed from validation data, (2) transferred from another analyte already included in the approved method, (3) transferred from another analyte in another approved method, or (4) transferred from another approved method for the same analyte. For a transfer from another analyte to be appropriate, the chemical characteristics of the analyte from which the criteria are transferred should simulate, as closely as possible, the chemical characteristics of the newly regulated analyte. For example, if 2,4-dimethyl-3-chlorophenol is added to Method 625, and data from a method validation study are not available from which QC acceptance criteria can be derived, QC acceptance criteria can be transferred from 2,4-dimethylphenol or 4-chloro-3-methylphenol in Method 625. For newly regulated analytes added to an existing method, it is highly likely that EPA would require that the QC acceptance criteria be developed from validation data rather than transferring criteria from another analyte to ensure proper validation.

3.1.3 Draft **Federal Register** Preamble

When Tier 2 and Tier 3 methods are to undergo the rulemaking process (e.g., for all new methods and modified methods requests), the submitter must provide information in a format suitable for proposal of the method at 40 CFR parts 136 or 141. This information should describe the basis and purpose for the proposed rule and should be written to communicate the import of the rule to the general public. The OFR requires a specific format for the preamble. Examples of appropriate and pertinent preambles include 49 FR 43234, October 26, 1984; 56 FR 5090, February 7, 1991; 60 FR 53988, October 18, 1995; and 61 FR 1730, January 23, 1996.

3.1.4 Submission to EPA

When all the pre-submission steps are completed, the method submitter should generate a single packet for submission to EPA. This packet will include the method in a standard format, the method validation report, the draft preamble (if rulemaking will occur), and any necessary supporting documents. If this streamlining proposal is promulgated, the submission packet will be submitted to the Director of the Analytical Methods Staff in EPA's Office of Water.

3.2 EPA Review

EPA must review all new methods, and will review Tier 2 and Tier 3 method modifications if requested. When a method package is submitted for review, EPA will first check the documentation for completeness. The documentation must include the final method in standard format, the validation report, and information that would facilitate EPA's drafting of a proposed rule (if rulemaking will occur). If all of the

documentation is in order, EPA will begin an internal review of the method for scientific merit, consistency, and appropriateness. The internal review may involve multiple programs and workgroups. Should any problems or questions arise, EPA will communicate with the submitter to resolve the outstanding issues. Depending on the circumstances, EPA may return the submission to the submitter for revision.

If internal review recommends acceptance, EPA will issue a letter of acceptance for a Tier 1 new method. For Tier 2 and Tier 3 new methods, EPA will begin the rulemaking process. For Tier 2 and Tier 3 method modifications, the method submitter has the option of receiving a letter of approval or proceeding with the rulemaking process.

TABLE 1–1.—EPA REVIEW AND APPROVAL OF METHODS

	New method	Modified method
Tier 1: Single-lab	• EPA review required • EPA issues a letter of approval	No EPA review.
Tier 2: Multi-lab, single matrix type	• EPA review required • Approved through rulemaking	• If requested, EPA reviews and issues letter of approval, or conducts rulemaking.
Tier 3: Multi-lab, multiple matrix type	• EPA review required • Approved through rulemaking	• If requested, EPA reviews and issues letter of approval, or conducts rulemaking.

3.3 Limited Use Methods

Currently, EPA reviews single-laboratory, limited-use methods only for special applications. Examples of special circumstances could include procedures to remove sulfate interferences in drinking water matrices and, as described below, technologies that can eliminate total cyanide false positives in some wastewater measurements.

Use of limited-use methods as Tier 1 methods for both wastewater and drinking water methods is allowed. The purpose of this allowance is to provide the means by which (1) a new technology can be introduced and (2) specific matrix interference problems can be overcome. Furthermore, additional single laboratories can use the technology until a sufficient number of devices are available for interlaboratory validation.

Tier 1 new methods must be submitted to EPA for review. Upon recommendation for approval, a letter of approval will be issued. Tier 1 modified methods can be used directly upon validation. EPA will not review Tier 1 method modifications.

3.4 Rulemaking Process

The customary rulemaking process consists of four phases: proposal of the rule, public comment, response to comments, and publication of the final rule. The proposed rule requests public comment and allows a specified comment period, for example, 30 to 90 days depending on the magnitude of the proposed change. At the end of the comment period, EPA will forward any significant comments to the method submitter. The submitter would then provide technical assistance to EPA in drafting responses to comments. All comments that have scientific or legal merit, or raise substantive issues with the proposed rule, must be answered to complete the rule-making process.

EPA will review the comment responses and complete a response-to-comments document that must be included in the final rule. EPA will prepare and submit the final rule to the OFR for publication. The final rule will state the date that the rule becomes effective; as of this date, the method is approved.

3.5 Proprietary Components

Proprietary components can be classified into three categories: proprietary reagents, proprietary instruments, and proprietary methods. Proprietary reagents and instruments are allowed in the approval of analytical methods for compliance purposes to the extent that such inclusion still provides an adequate opportunity for public review and comment under the Administrative Procedure Act. Use of proprietary methods for determining compliance with regulatory requirements where the entire method is claimed as ''confidential business information'' (CBI) is not allowed. However, if the proprietary method is patented it could be considered for approval because the public would have the opportunity to comment on the patented method.

Proprietary reagents and instruments are allowed in approved methods. The details of the proprietary elements must be disclosed to EPA, but will be withheld from the public if the person requesting protection for the CBI demonstrates that the information is entitled to confidential treatment under the applicable regulations. Examples of these proprietary components are immunoassay reagents and antibodies, and liquid phases in GC columns, e.g., DB–1®, SPB-octyl, Dexsil®, etc. A new or modified method submitted for EPA approval must include language stating that the proprietary reagent or instrument can be replaced by an equivalent. Changes made to the method after EPA approval would require the manufacturer to demonstrate through supporting documentation that the new proprietary equipment, substance, or reagent would produce results equal or superior to results produced with the material originally tested and on which the method approval is based. For proprietary reagents, a method must contain accurate, specific instructions for the safe handling of each proprietary reagent listed in the method, and for safe disposal of each spent proprietary reagent and/or reagent product. When a material safety data sheet (MSDS) accompanies the proprietary material, the MSDS will serve as these instructions, and the submission of an MSDS with the method shall be evidence that the requirements for instructions for safe handling and disposal of the reagent have been met.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 141.2 is proposed to be amended by adding the following definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

As used in this part, the term:

Accuracy means the degree of agreement between an observed value and an accepted reference value. Accuracy includes random error (precision) and systematic error (bias) that are caused by sampling and analysis.

* * * * *

Administrator means the Administrator of the U.S. Environmental Protection Agency (EPA).

Analyte or Analyte of concern means a substance or property that is to be measured by an analysis.

Approved method means a testing procedure (analytical method) promulgated at this part or at 40 CFR part 142 or 143.

Assistant Administrator (AA) means the EPA Assistant Administrator for Water.

* * * * *

Calibration (CAL) means the process of establishing the relationship between the concentration or amount of material introduced into an instrument or measurement process and the output signal.

Calibration linearity means the degree to which calibration points lie along a straight line.

Calibration verification means the means of establishing that instrument

performance remains within pre-established limits.

* * * * *

Determinative technique means the process (physical or chemical or both) to measure the identity and concentration of an analyte. In test methods, the determinative technique follows the front-end techniques.

* * * * *

Front-end technique means any technique in the analytical process that precedes the determinative technique, including all procedures, equipment, solvents, etc. that are used in the laboratory in the preparation and cleanup of a sample but this excludes conditions and/or procedures for the collection, preservation, shipment and storage of the sample.

* * * * *

Initial precision and recovery test (IPR) means analysis of a minimum of four spiked reagent water samples under the same conditions as will be used for analysis of environmental samples. The IPR is used to demonstrate that a laboratory is able to produce reliable results with the method prior to analysis of environmental samples.

Interference means a positive or negative effect on a measurement caused by a substance other than the analyte being investigated.

* * * * *

Matrix means the component or substrate that contains the target analyte.

Matrix spike (MS) means a sample prepared by adding a known mass of target analyte to a specified amount of a sample matrix for which an independent estimate of target analyte concentration is available.

Matrix spike duplicate (MSD) means a duplicate of the matrix spike. The MS/MSD are used in combination to test the precision of an analysis.

Matrix type is any potable water sample provided by a PWS.

* * * * *

Medium means the physical phase of a sample matrix. Air, water, soil, sediment, rock, and sludge are sample media.

* * * * *

Method means an orderly and systematic arrangement of procedures and techniques for performing an analysis.

Method blank (or blank) means a sample absent the analytes of interest and interferences that is processed through all steps of a method simultaneously with and under the same conditions as samples that may contain an analyte of interest.

Method detection limit (MDL) means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero as determined by the procedure set forth in appendix B of this part.

Method Guidelines and Format means the procedures set forth in appendix F of part 136.

Method modification means a change to a reference method. The change may be to a front-end technique or to the determinative technique.

Method validation means a process by which a laboratory or vendor establishes the performance of a new method or substantiates the performance of a reference method modification.

Minimum level (ML) means the lowest level at which an entire analytical system gives a recognizable signal and acceptable calibration point for an analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample weights, volumes, and clean-up procedures have been employed.

* * * * *

New method means a combination of analyte of concern and determinative technique that is different from those in the approved methods.

* * * * *

Ongoing precision and recovery sample (OPR) means a spiked reference matrix sample that is processed through all steps of a method simultaneously with and under the same conditions as samples that may contain an analyte of interest. Also called a laboratory control sample (LCS), the OPR/LCS is used to demonstrate that a laboratory is able to produce reliable results continuously.

* * * * *

Organic Methods means the document titled: Methods for the Determination of Organic Compounds in Drinking Water—Supplement III (available from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia, 22161, 703/487–4600, at NTIS publication PB97–125298).

Other approved method means a promulgated method that is not designated as a reference method.

Percent recovery means the recovery multiplied by one hundred.

* * * * *

Precision means the degree to which a set of observations or measurements of the same property, usually obtained under similar conditions, conform to themselves. Precision is usually expressed as standard deviation, variance, or range, in either absolute or relative terms.

Preparation means processing performed on a sample prior to analysis, including extraction, concentration, and cleanup.

Procedure means a set of systematic instructions for performing an activity.

Promulgated method means a method that has been published or incorporated by reference into 40 CFR parts 141, 142, or 143.

* * * * *

Quality assurance (QA) means an integrated system of activities involving planning, quality control, quality assessment, reporting, and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

Quality control (QC) means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of a user. The aim is to provide quality that is satisfactory, adequate, dependable, and economical.

QC acceptance criteria means performance specifications developed from validation data and used to control the limits within which an analytical method is operated.

Range means the amounts or concentrations over which an instrument or analytical system is calibrated.

Recovery means the total amount of analyte found divided by the amount of analyte added as a spike.

Reference method means an approved method that is designated as a standard to which a modified method can be compared. A reference method will include standardized QC and QC acceptance criteria as well as sample preparation, cleanup, and other procedures.

Regional Administrator means an EPA Regional Administrator.

* * * * *

Sample means a portion of a larger whole or a single item of a group; a finite part or subset of a statistical population; the medium subjected to analysis. A sample serves to provide data or information concerning the properties of the whole or population.

Sample matrix effect validation means to verify that the performance of a modified or new analytical method on samples obtained from different PWSs does not differ from the results validated in reagent water samples.

* * * * *

Screening method means a method that employs a qualitative determinative technique for an analyte of interest that

is different from the determinative techniques used in all approved methods for that analyte. The screening method must produce a false negative probability less than 1%.

* * * * *

Selectivity means the capability of a method or instrument to respond to an analyte in the presence of interferences.

Sensitivity means the capability of a method or instrument to differentiate between different amounts or concentrations of an analyte.

* * * * *

Spike means the process of adding a known amount of an analyte to a sample to determine the recovery.

Spike amount means a known mass of analyte added to a sample and used to determine the recovery of a method.

Standard deviation means the measure of the dispersion of observed values expressed as the positive square root of the sum of the squares of the difference between the individual values of a set and the arithmetic mean of the set, divided by one less than the number of values in the set.

* * * * *

Standardized quality control (standardized QC) means a uniform set of performance testing procedures that ensure reliable results. Depending on the method, standardized QC procedures include, but are not limited to, the following: calibration, calibration linearity, calibration verification, absolute retention time, absolute and relative retention time precision, initial precision and recovery, ongoing precision and recovery (laboratory control sample), surrogate or labeled compound recovery, analysis of blanks, matrix spike and matrix spike duplicate recovery and precision, demonstration of method detection limit(s), and analysis of a reference sample.

* * * * *

Surrogate means a substance with properties that mimic the behavior of an analyte, that is unlikely to be found in an environmental sample, and that is added to the sample for quality control purposes.

* * * * *

Tier 1 means the application of a new or modified method in a single laboratory to one or more PWSs .

Tier 2 means the application of a new or modified method by all laboratories to all PWSs (nationwide use).

* * * * *

3. Section 141.23, paragraph (k)(1), is proposed to be amended by revising the table to read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

* * * * *

(k) * * *

(l) * * *

TABLE 141.23(k)(1)—LIST OF APPROVED INORGANIC TEST PROCEDURES

Contaminant	Methodology	Reference method	Other approved methods			
			EPA	ASTM [3,13]	SM[4,13]	Other
Antimony	ICP-Mass Spectrometry	[2] 200.8				
	Hydride-Atomic Absorption			D–3697–92		
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace				3113B	
Arsenic	Inductively Coupled Plasma	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace			D–2972–93C	3113B	
	Hydride-Atomic Absorption			D–2972–93B	3114B	
Asbestos	Transmission Electron Microscopy	[10] 100.2	[9] 100.1			
Barium	Inductively Coupled Plasma	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Direct				3111D	
	Atomic Absorption; Furnace				3113B	
Beryllium	Inductively Coupled Plasma	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace			D–3645–93B	3113B	
Cadmium	Inductively Coupled Plasma	[2] 200.7				
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace				3113B	
Chromium	Inductively Coupled Plasma	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace				3113B	
Cyanide	Manual Distillation followed by				4500–CN–C	
	Spectrophotometric, Amenable			D–2036–91B	4500–CN–G	
	Spectrophotometric, Manual			D2036–91A	4500–CN–E	[5] I–3300–85
	Semi-automated	[6] 335.4				
	Selective Electrode				4500–CN–F	
Fluoride	Ion Chromatography	[6] 300.0		D4327–91	4110B	
	Manual Distill.; Color. SPADNS				4500–F–B,D	
	Manual Electrode			D1179–93B	4500–F–C	
	Automated Electrode				4500–F–E	[11] 380–75WE
	Automated Alizarin					[11] 129–71W
Mercury	Manual, Cold Vapor	[2] 245.1		D3223–91	3112B	
	Automated, Cold Vapor	[1] 245.2				
	ICP-Mass Spectrometry	[2] 200.8				
Nickel	Inductively Coupled Plasma	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Direct				3111B	

TABLE 141.23(k)(1)—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Contaminant	Methodology	Reference method	Other approved methods			
			EPA	ASTM [3,13]	SM[4,13]	Other
	Atomic Absorption; Furnace				3113B	
Nitrate	Ion Chromatography	[6] 300.0		D4327–91	4110B	[8] B–1011
	Automated Cadmium Reduction	[6] 353.2		D3867–90A	4500–NO_3–F	
	Ion Selective Electrode				4500–NO_3–D	[7] 601
	Manual Cadmium Reduction			D3867–90B	4500–NO_3–E	
Nitrite	Ion Chromatography	[6] 300.0		D4327–91	4110B	[8] B–1011
	Automated Cadmium Reduction	[6] 353.2		D3867–90A	4500–NO_3–F	
	Manual Cadmium Reduction			D3867–90B	4500–NO_3–E	
	Spectrophotometric				4500–NO_2–B	
Selenium	Hydride-Atomic Absorption			D3859–93A	3114B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
	Atomic Absorption; Furnace			3859–93B	3113B	
Thallium	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
Lead	Atomic Absorption; Furnace			D3559–90D	3113B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
Copper	Atomic Absorption; Furnace			D1688–90C	3113B	
	Atomic Absorption; Direct Aspiration			D1688–90A	3111B	
	ICP	[2] 200.7			3120B	
	ICP-Mass Spectrometry	[2] 200.8				
	Atomic Absorption; Platform	[2] 200.9				
pH	Electrometric	[1] 150.2	[1] 150.1	D1293–84	4500–H^+–B	
Conductivity	Conductance			D1125–91A	2510B	
Calcium	EDTA Titrimetric			D511–93A	3500–Ca–D	
	Atomic Absorption; Direct Aspiration			D511–93B	3111B	
	Inductively Coupled Plasma	[2] 200.7			3120B	
Alkalinity	Titrimetric			D1067–92B	2320B	
	Electrometric Titration					[5] I–1030–85
Orthophosphate [12]	Colorimetric, Automated, Ascorbic Acid	[6] 365.1			4500–P–F	
	Colorimetric, Ascorbic Acid, Single Reagent			D515–88A	4500–P–E	
	Colorimetric, Phosphomolybdate;					[5] I–1601–85
	Automated-segmented flow;					[5] I–2601–90
	Automated discrete					[5] I–2598–85
	Ion Chromatography	[6] 300.0		D4327–91	4110	
Silica	Colorimetric, Molybdate Blue;					[5] I–1700–85
	Automated-segmented flow					[5] I–2700–85
	Colorimetric			D859–88		
	Molybdosilicate				4500–Si–D	
	Heteropoly Blue				4500–Si–E	
	Automated Method for Molybdate-Reactive Silica				4500–Si–F	
	Inductively Coupled Plasma	[2] 200.7			3120B	
Temperature	Thermometric				2550	
Sodium	Inductively Coupled Plasma	[2] 200.7				
	Atomic Absorption; Direct Aspiration				3111B	

[1] Methods 150.1, 150.2 and 245.2 are available from U.S. EPA, NERL, Cincinnati, OH 45268. The identical methods were formerly in ''Methods for Chemical Analysis of Water and Wastes'', EPA–600/4–79–020, March 1983, which is available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement 1'', EPA–600/R–94–111, May 1994. Available at NTIS, PB 94–184942.

[3] The procedures shall be done in accordance with the *Annual Book of ASTM Standards*, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. 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 the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, S.W., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

[4] The procedures shall be done in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater*, 1992, American Public Health Association. 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 the American Public Health Association, 1015 Fifteenth Street, N.W., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, S.W., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

[5] Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water'', July 1994, PN 221890–001, Analytical Technology, Inc. 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 ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, S.W., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography'', Millipore Corporation, Water Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, ''Analytical Method for Determination of Asbestos Fibers in Water'', EPA–600/4–83–043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, ''Determination of Asbestos Structure Over 10 μm in Length in Drinking Water'', EPA–600/R–94–134, June 1994. Available at NTIS, PB94–201902.

[11] The procedures shall be done in accordance with the Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater'', December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater'', February 1976, Technicon Industrial Systems. 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 the Technicon Industrial Systems, Tarrytown, NY 10591. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, S.W., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

[12] Unfiltered, no digestion or hydrolysis.

[13] Methods published by this organization and approved for use under this part may not be modified beyond the modifications expressly allowed and defined.

* * * * *

4. Section 141.24, paragraph (e), is proposed to be amended by revising the table to read as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

* * * * *

(e) * * *

TABLE 141.24(e).—LIST OF APPROVED ORGANIC TEST PROCEDURES

Parameter/methodology	Reference method	Other approved methods		
		EPA	Standard method 18th Ed.[1]	Other
1. Benzene				
GC/ELCD	502.2			
GC/MS	524.2			
2. Carbon Tetrachloride				
GC/ELCD	502.2			
GC/MS	524.2			
GC/ECD	551			
3. Chlorobenzene				
GC/ELCD	502.2			
GC/MS	524.2			
4. 1,2-Dichlorobenzene				
GC/ELCD	502.2			
GC/MS	524.2			
5. 1,4-Dichlorobenzene				
GC/ELCD	502.2			
GC/MS	524.2			
6. 1,2-Dichloroethane				
GC/ELCD	502.2			
GC/MS	524.2			
7. cis-Dichloroethylene				
GC/ELCD	502.2			
GC/MS	524.2			
8. Trans-Dichloroethylene				
GC/ELCD	502.2			
GC/MS	524.2			
9. Dichloromethane				
GC/ELCD	502.2			
GC/MS	524.2			
10. 1,2-Dichloropropane				
GC/ELCD	502.2			
GC/MS	524.2			
11. Ethylbenzene				
GC/ELCD	502.2			
GC/MS	524.2			
12. Styrene				
GC/ELCD	502.2			
GC/MS	524.2			
13. Tetrachloroethylene				
GC/ELCD	502.2			
GC/MS	524.2			
GC/ECD	551			
14. 1,1,1-Trichloroethane				
GC/ELCD	502.2			
GC/MS	524.2			
GC/ECD	551			
15. Trichloroethylene				
GC/ELCD	502.2			
GC/MS	524.2			
GC/ECD	551			
16. Toluene				
GC/ELCD	502.2			

TABLE 141.24(e).—LIST OF APPROVED ORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method	Other approved methods		
		EPA	Standard method 18th Ed.[1]	Other
GC/MS	524.2			
17. 1,2,4-Trichlorobenzene				
GC/ELCD	502.2			
GC/MS	524.2			
18. 1,1-Dichloroethylene				
GC/ELCD	502.2			
GC/MS	524.2			
19. Vinyl chloride				
GC/ELCD	502.2			
GC/MS	524.2			
20. Xylenes (total)		515.1		
GC/ELCD	502.2			
GC/MS	524.2			
21. 2,3,7,8-TCDD (dioxin)		515.1		
GC/MS	1613			
22. 2,4-D				
GC/ECD	515.2			
HPLC/UV	555			
23. 2,4,5-TP (Silvex)				
GC/ECD	515.2			
HPLC/UV	555			
24. Alachlor				
GC/NPD	507			
GC/ECD	508.1	505		
GC/MS	525.2			
25. Atrazine				
GC/NPD	507			
GC/ECD	508.1	505		
GC/MS	525.2			
26. Benzo(a)pyrene				
GC/MS	525.2			
HPLC/Fl-UV	550.1	550	6610	
27. Carbofuran				
HPLC/Fl	531.1			
28. Chlordane				
GC/NPD	507			
GC/ECD	508.1	505		
GC/MS	525.2			
29. Dalapon				
GC/ECD	515.1	552.1		
30. Di-(2-ethylhexyl) adipate				
GC/PID	506			
GC/MS	525.2			
31. Di-(2-ethylhexyl) phthalate				
GC/PID	506			
GC/MS	525.2			
32. Dibromochloropropane (DBCP)				
GC/ECD	504.1	551		
33. Dinoseb				
GC/ECD	515.2	515.1		
HPLC/UV	555			
34. Diquat				
HPLC/UV	549.1			
35. Endothall				
GC/MS	548.1			
36. Endrin				
GC/NPD	507			
GC/ECD	508.1	505		
GC/MS	525.2			
37. Ethylene Dibromide (EDB)				
GC/ECD	504.1	551		
38. Glyphosate				
HPLC/Fl	547		6651	
39. Heptachlor				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
40. Heptachlor Epoxide				
GC/ECD	508.1	505, 508		

TABLE 141.24(e).—LIST OF APPROVED ORGANIC TEST PROCEDURES—Continued

Parameter/methodology	Reference method	Other approved methods		
		EPA	Standard method 18th Ed.[1]	Other
GC/MS	525.2			
41. Hexachlorobenzene				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
42. Hexachlorocyclopentadiene				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
43. Lindane				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
44. Methoxychlor				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
45. Oxamyl				
HPLC/Fl	531.1		6610	
46. PCBs				
GC/ECD, As decachlorobiphenyl	508A			
GC/ECD, As Aroclors	508	505		
47. Pentachlorophenol		515.1		
GC/ECD	515.2			
HPLC/UV	555			
GC/MS	525.2			
48. Picloram		515.1		
GC/ECD	515.2			
HPLC/UV	555			
49. Simazine		505		
GC/NPD	507			
GC/ECD	508.1			
GC/MS	525.2			
50. Toxaphene		505		
GC/ECD	508			
GC/MS	525.2			
51. Total Trihalomethanes				
GC/ELCD	502.2			
GC/MS	524.2			
GC/ECD	551			

[1] Methods published by this organization and approved for use under this part may not be modified beyond the modifications expressly allowed and defined in each method.

Note: The following acronyms are used in this table:
ECD—Electron Capture Detector.
ELCD—Electrolytic Conductivity Detector.
Fl—Fluorescence.
GC—Gas Chromatography.
GC/MS—Gas Chromatography/Mass Spectrometry.
HPLC—High Performance Liquid Chromatography.
NPD—Nitrogen Phosphorous Detector.
PID—Photoionization Detector.
UV—Ultraviolet Detector.

* * * * *

5. Section 141.27 is proposed to be revised to read as follows:

§ 141.27 New and alternate analytical methods.

(a) Sample preservation procedures, container materials, and maximum allowable holding times for contaminants cited in tables in §§ 141.23(k)(1), 141.24(e) and 141.40(n)(11) are prescribed in these methods except as specified in the table in § 141.23(k)(2). Any person may apply for a variance from the prescribed preservation techniques, container materials, and maximum holding times applicable to samples collected from a public water system (PWS) supply or tap water. An application for a variance may be made by letter to the Regional Administrator in the Region in which the water supply system is located. Sufficient data should be provided to ensure such variance does not adversely affect the integrity of the sample. Such data will be forwarded by the Regional Administrator to the Director of the Analytical Methods Staff for technical review and recommendations for action on the variance application. Upon receipt of a recommendation from the Director of the Analytical Methods Staff, the Administrator may grant a variance applicable to samples collected from the specific PWS for which the application for variance was made. A decision to recommend approval or denial of a variance will be made within 90 days of receipt of a complete application.

(b) A reference method listed in the tables in §§ 141.23(k)(1), 141.24(e), and 141.40(n)(11) of this section may be modified to improve separations, lower the costs of measurements, reduce or eliminate interferences, or for other purposes, provided that the modification is not explicitly prohibited in the reference method and provided

that the laboratory modifying the reference method meets the requirements in this section, performs the standardized QC tests, and demonstrates that the QC acceptance criteria and the requirements specified at Appendixes E, F, and G of 40 CFR part 136 are met. A laboratory that wishes to use a new or modified drinking water method must demonstrate that the MDL determined with that method meets the detection limits specified at §§ 141.23, 141.24 and 141.89 and/or at § 141.27(d). Demonstration of a valid detection limit requires use of an MDL study in accordance with the procedure at 40 CFR part 136, Appendix B. If the MDL determined with the new or modified method is not acceptable, the method may not be used. Specified detection limits are usually analyte-specific. For any given analyte, the specified detection limit may vary between a wastewater and a drinking water reference method.

(1) Tier 1: modification of a reference method for application in a single laboratory to one or more PWSs.

(i) Application to a single PWS.

(A) A laboratory may modify a reference method listed in the tables in §§ 141.23(k)(1), 141.24(e) and 141.40(n)(11) of this section for determination of an analyte of concern in a specific PWS, provided that the laboratory:

(*1*) Performs the standardized QC tests, including a test of initial precision and recovery (IPR) on a reagent water matrix;

(*2*) Performs the matrix spike (MS) and matrix spike duplicate (MSD) tests on a sample from the PWS to which the modification is to be applied;

(*3*) Meets the QC acceptance criteria in the reference method as supplemented in the table of QC acceptance criteria for drinking water methods at § 141.27(d);

(*4*) Documents the results of the QC tests using the Checklist for Initial Demonstration of Method Performance and the Checklist for Continuing Demonstration of Method Performance which are specified in 40 CFR part 136, Appendix E; and

(*5*) Maintains the results of the QC tests and other tests on file for inspection by EPA and/or the State.

(B) After the laboratory has demonstrated application of a method modification to a given PWS by meeting the MS/MSD QC acceptance criteria, only that laboratory may subsequently apply that method modification to samples from that PWS.

(C) A laboratory may apply a given method modification to additional PWSs if the laboratory validates the modification on a sample from each PWS by performing a matrix spike (MS) and matrix spike duplicate (MSD) test and meeting the MS/MSD QC acceptance criteria for precision and recovery for each PWS.

(ii) Application to multiple public water systems (PWSs). After a laboratory has validated a given modification on samples from a minimum of three (3) PWSs in accordance with the procedures given in paragraph (b)(1)(i)(A) of this section, the laboratory may subsequently apply that method modification to other PWSs, provided that the matrix spike (MS) and matrix spike duplicate (MSD) recovery and the relative percent difference are within the QC acceptance criteria given for the analyte in the reference method as supplemented by the applicable QC acceptance criteria for drinking water methods at § 141.27(d). If all QC acceptance criteria are not met for a sample from a given PWS, the modification may not be applied to samples from that PWS.

(iii) To test the modified method for potential matrix effects, the three (3) PWS samples must be collected from PWSs with water quality characteristics that are sufficiently different that sample matrix effects, if any, can be observed. In all cases, the laboratory must try to determine if the measurement result for the target analyte using a new or modified method differs from the result obtained in a reagent water matrix or in a previously validated matrix type or PWS sample. Selection of suitable PWSs requires a knowledge of the chemistry of the method. Analysts may review an applicable approved or published method for indications of matrix effects that are unique to the analyte separation and measurement technologies used in the new or modified method. Water quality characteristics that can affect analysis of drinking water samples include, but are not limited to pH, total organic carbon content, turbidity, total organic halogen content, ionic strength, sulfate contamination, metal contamination, and trihalomethane contamination of the drinking water sample.

(2) Tier 2: modification of a reference method for application by all laboratories to all PWSs in the water supply and distribution industry (nationwide modification).

(i) A person may modify a reference method for application by all laboratories to determination of an analyte of concern in sample matrices from any PWS provided that the modification is validated in a minimum of three (3) laboratories each of which test a sample from each of three (3) different PWS for a minimum of nine (9) tests. To test the modified method for potential matrix effects, the three (3) PWS samples must be collected from PWSs with sufficiently different water quality characteristics according to criteria specified at paragraph (b)(1)(iii) of this section. Each laboratory must meet the requirements in paragraph (b)(1)(i)(A) of this section. After the tests in all three laboratories have met all QC acceptance criteria for the reference method, the modified method may be applied by laboratories nationwide to PWSs in the water supply and distribution industry.

(ii) A person who modifies a reference method and validates the method modification under Tier 2 may submit that modification to EPA for a letter of approval. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1)(i)(A) of this section. This information and other information that must be submitted and the format for submission are specified at 40 CFR part 136, Appendixes E, F, and G.

(iii) A person who modifies a reference method and validates the method modification under Tier 2 may submit that modification to EPA for approval and inclusion in a table in this part 141. The information that must be submitted includes the results of the performance tests required by paragraph (b)(1)(i)(A) of this section. This information and other detailed information that must be submitted and the format for submission are specified at 40 CFR part 136, Appendixes E, F, and G.

(iv) A decision to recommend proposal of a Tier 2 method modification will be made by the Director of the Analytical Methods Staff within 90 days of receipt of a complete application.

(c) A person may apply to EPA for use of a new method for determination of an analyte of concern, provided that the new method meets the requirements for validation and format as specified in this section and in 40 CFR part 136, Appendixes E, F, and G.

(1) The new method must demonstrate an acceptable MDL for each analyte as specified in § 141.27(b).

(i) A new method must:

(A) Be documented in accordance with requirements in 40 CFR part 136, Appendixes E, F, and G.

(B) Contain standardized QC as defined at § 141.2.

(C) Contain QC acceptance criteria that have been developed in accordance

with the requirements detailed in 40 CFR part 136, Appendixes E, F, and G.

(D) Employ a determinative technique for an analyte of concern with selectivity or sensitivity equal or superior to the selectivity or sensitivity of the determinative technique in any approved method, and that differs from the determinative techniques employed for that analyte in all approved methods.

(E) Be accompanied by the information specified at 40 CFR part 136, Appendix G.

(ii) A decision to recommend proposal of a new method will be made by the Director of the Analytical Methods Staff within 90 days of receipt of a complete application.

(2) Tier 1: application of a new method by a single laboratory to one or more PWSs.

(i) A person may develop a new method for determination of an analyte of concern by a single laboratory by validating the method and developing QC acceptance criteria from an interlaboratory method validation study or from a single-laboratory validation study on a drinking water sample. Details of the single-laboratory method validation study and development of QC acceptance criteria from a single-laboratory or interlaboratory method validation study are specified at paragraph (b)(1) of this section and at 40 CFR part 136, Appendix E.

(ii) A person who develops a new method under Tier 1 must submit the method to EPA for a letter of approval. The information that must be submitted and the format for submission are specified at 40 CFR part 136, Appendixes E, F, and G.

(3) Tier 2: application of a new method by all laboratories to all PWSs in the water supply and distribution industry (nationwide use).

(i) A person may develop a new method for determination of an analyte of concern in all PWSs in the water supply and distribution industry by developing QC acceptance criteria from an interlaboratory method validation study or from multiple, single-laboratory validation studies as specified in the Streamlining Guide, and by validating the new method in a minimum three (3) laboratories each of which test samples from a minimum of three (3) different PWS for a minimum of nine (9) tests. In the method validation study, each laboratory will test all of the samples from the same set of PWS samples and this set will contain samples from a minimum of three (3) different PWSs. To test the modified method for potential matrix effects, the three (3) PWS samples must be collected from PWSs with sufficiently different water quality characteristics according to criteria specified at paragraph (b)(2) and (b)(1)(iii) of this section.

(ii) A person who develops a new method under Tier 2 must submit the method to EPA for approval and inclusion in a table in this part 141. The information that must be submitted includes the results of the performance tests required by paragraph (b)(2)(i) of this section. This information and other detailed information that must be submitted and the format for submission are specified at 40 CFR part 136, Appendixes E, F, and G.

(d) Standardized QC and QC acceptance criteria for modifications of inorganic contaminant reference methods at § 141.23(k)(1) of this section are as follows:

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Standardized QC and QC Acceptance Criteria for Methods in 40 CFR 141.23(k)(1)

		Data					Specs				IPR			OPR		MS/MSD					
No.	Analyte	Reference Method	Recovery	Prec-ision	Labs	Source	CAL Points	Lin	MCL (ug/L)	Spike conc	Recovery Low	Recovery High	Prec-ision	Recovery Low	Recovery High	Recovery Low	Recovery High	RPD	ML MDL	ML Value	Calc
1.	Alkalinity - Titr/Man	---																			
	Alkalinity - Titr/Auto	---																			
2.	Antimony - Furnace	---							6.0												
	Antimony - Hydride	---							6.0												
	Antimony - ICP/MS	200.8	98.8	8.067	Multi	Tbl 12	3	10 %	6.0	6 ug/L	82.0	115.0	17.0	81.0	117.0	81.0	117.0	17.0	0.4 ug/L	1 ug/L	3.18 x MDL
	Antimony - STGFAA	200.9	95.4	2.8	Single	Tbl IE	3	10 %	6.0	20 ug/L	85.0	106.0	11.0	84.0	107.0	84.0	107.0	11.0	0.8 ug/L	2 ug/L	3.18 x MDL
3.	Arsenic - Furnace	---							50												
	Arsenic - Hydride	---							50												
	Arsenic - ICP	200.7	98.27	13.59	Multi	Apx C	3	10 %	50	200 ug/L	71.0	126.0	28.0	68.0	129.0	68.0	129.0	28.0	53 ug/L	200 ug/L	3.18 x MDL
	Arsenic - ICP/MS	200.8	100.44	6.9	Multi	Tbl 12	3	10 %	50	50 ug/L	86.0	115.0	14.0	85.0	116.0	85.0	116.0	14.0	1.4 ug/L	5 ug/L	3.18 x MDL
	Arsenic - STGFAA	200.9	88.4	10	Single	Tbl IE	3	10 %	50	10 ug/L	52.0	125.0	36.0	48.0	129.0	48.0	129.0	36.0	0.5 ug/L	2 ug/L	3.18 x MDL
4.	Asbestos - TEM	100.1							7 MFL												
	Asbestos - TEM	100.2							7 MFL												
5.	Barium - Flame	---							2000												
	Barium - Furnace	---							2000												
	Barium - ICP	200.7	76.88	18.47	Multi	Apx C	3	10 %	2000	1 mg/L	39.0	114.0	37.0	36.0	118.0	36.0	118.0	37.0	2 ug/L	5 ug/L	3.18 x MDL
	Barium - ICP/MS	200.8	96.31	4.55	Multi	Tbl 12	3	10 %	2000	1 mg/L	87.0	106.0	9.1	86.0	107.0	86.0	107.0	9.1	0.8 ug/L	2.0 ug/L	3.18 x MDL
6.	Beryllium - Flame	---							4.0												
	Beryllium - ICP	200.7	97.54	25.11	Multi	Apx C	3	10 %	4.0	4 ug/L	47.0	148.0	51.0	42.0	153.0	42.0	153.0	51.0	0.3 ug/L	1 ug/L	3.18 x MDL
	Beryllium - ICP/MS	200.8	110.50	12.70	Multi	Tbl 12	3	10 %	4.0	4 ug/L	85.0	136.0	26.0	82.0	139.0	82.0	139.0	26.0	0.3 ug/L	1 ug/L	3.18 x MDL
	Beryllium - STGFAA	200.9	106	9.4	Single	Tbl IE	3	10 %	4.0	2.5 ug/L	72.0	140.0	34.0	68.0	144.0	68.0	144.0	34.0	0.02 ug/L	0.05 ug/L	3.18 x MDL
7.	Cadmium - Furnace	---							5.0												
	Cadmium - ICP	200.7	95.14	45.97	Multi	Apx C	3	10 %	5.0	5 ug/L	3.0	188.0	92.0	d	197.0	d	197.0	92.0	4 ug/L	10 ug/L	3.18 x MDL
	Cadmium - ICP/MS	200.8	100.5	16.1	Multi	Tbl 12	3	10 %	5.0	5 ug/L	68.0	133.0	33.0	65.0	136.0	65.0	136.0	33.0	0.5 ug/L	2 ug/L	3.18 x MDL
	Cadmium - STGFAA	200.9	105.2	6.3	Single	Tbl IE	3	10 %	5.0	0.5 ug/L	82.0	128.0	23.0	80.0	131.0	80.0	131.0	23.0	0.05 ug/L	0.2 ug/L	3.18 x MDL
8.	Calcium - Flame	---							---												
	Calcium - ICP	200.7	89.22	22.38	Multi	Apx C	3	10 %	---	100 ug/L	44.0	134.0	45.0	39.0	139.0	39.0	139.0	45.0	10 ug/L	20 ug/L	3.18 x MDL
	Calcium - Titr	---							---												
9.	Chromium - Furnace	---							100												
	Chromium - ICP	200.7	98.54	9.39	Multi	Apx C	3	10 %	100	100 ug/L	79.0	118.0	19.0	77.0	120.0	77.0	120.0	19.0	7 ug/L	20 ug/L	3.18 x MDL
	Chromium - ICP/MS	200.8	100.45	3.69	Multi	Tbl 12	3	10 %	100	100 ug/L	93.0	108.0	7.4	92.0	109.0	92.0	109.0	7.4	0.9 ug/L	2 ug/L	3.18 x MDL
	Chromium - STGFAA	200.9	105.7	3.1	Single	Tbl IE	3	10 %	100	2.5 ug/L	94.0	117.0	12.0	93.0	119.0	93.0	119.0	12.0	0.1 ug/L	0.2 ug/L	3.18 x MDL

Standardized QC and QC Acceptance Criteria for Methods in 40 CFR 141.23(k)(1)

		Data					Specs				IPR			OPR		MS/MSD					
No.	Analyte	Reference Method	Recovery	Prec-ision	Labs	Source	CAL Points	Lin	MCL (ug/L)	Spike conc	Recovery Low	Recovery High	Prec-ision	Recovery Low	Recovery High	Recovery Low	Recovery High	RPD	ML MDL	ML Value	Calc
10.	Conductivity	---																			
11.	Copper - Flame	---							1000												
	Copper - Furnace	---							1000												
	Copper - ICP	200.7	92.94	4.71	Multi	Apx C	3	10 %	1000	1 mg/L	83.0	103.0	9.5	82.0	104.0	82.0	104.0	9.5	6 ug/L	20 ug/L	3.18 x MDL
	Copper - ICP/MS	200.8	97.56	6.39	Multi	Tbl 12	3	10 %	1000	1 mg/L	84.0	111.0	13.0	83.0	112.0	83.0	112.0	13.0	0.09 ug/L	0.2 ug/L	3.18 x MDL
	Copper - STGFAA	200.9	111.5	10	Single	Tbl IE	3	10 %	1000	10 ug/L	75.0	148.0	36.0	71.0	152.0	71.0	152.0	36.0	0.7 ug/L	2 ug/L	3.18 x MDL
12.	Cyanide - CATC	---							200												
	Cyanide - Spectro/Man	---							200												
	Cyanide - Spectro/Auto	335.4	100	10	No data	Default	3	10 %	200	200 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0		5 ug/L	Range
	Cyanide - ISE	---							200												
13.	Fluoride - Elec/man	---							2000												
	Fluoride - Elec/auto	---							2000												
	Fluoride - SPADNS	---							2000												
	Fluoride - Auto/Aliz	---							2000												
	Fluoride - IC	300.0	87.7	5	Single	MCAWW	3	10 %	2000	2 mg/L	69.0	106.0	18.0	67.0	108.0	67.0	108.0	18.0	5 ug/L	20 ug/L	3.18 x MDL
14.	pH - Electrode	150.1	---	---					6.5-8.5												
	pH - Auto	150.2	---	---					6.5-8.5												
15.	Lead - Furnace	---							---												
	Lead - ICP/MS	200.8	100.20	12.10	Multi	Tbl 12	3	10 %	---	10 ug/L	76.0	125.0	25.0	73.0	127.0	73.0	127.0	25.0	0.6 ug/L	2 ug/L	3.18 x MDL
	Lead - STGFAA	200.9	101.80	4.00	Single	Tbl IE	3	10 %	---	10 ug/L	87.0	117.0	15.0	85.0	118.0	85.0	118.0	15.0	0.7 ug/L	2 ug/L	3.18 x MDL
16.	Mercury - CV/Man	245.1	100.34	43.82	Multi	MCAWW	3	10 %	2.0	2 ug/L	12.0	188.0	88.0	3.0	197.0	3.0	197.0	88.0		0.2 ug/L	Range
	Mercury - CV/Auto	245.2	102	4.5	Single	MCAWW	3	10 %	2.0	2 ug/L	85.0	119.0	17.0	84.0	120.0	84.0	120.0	17.0		0.2 ug/L	Range
	Mercury - ICP/MS	200.8	100	10	No data	Default	3	10 %	2.0	2 ug/L	64.0	136.0	36.0	60.0	140.0	60.0	140.0	36.0	No data		
17.	Nickel - Flame	---							100												
	Nickel - Furnace	---							100												
	Nickel - ICP	200.7	95.48	10.44	Multi	Apx C	3	10 %	100	100 ug/L	74.0	117.0	21.0	72.0	119.0	72.0	119.0	21.0	15 ug/L	50 ug/L	3.18 x MDL
	Nickel - ICP/MS	200.8	95.11	5.16	Multi	Tbl 12	3	10 %	100	100 ug/L	84.0	106.0	11.0	83.0	107.0	83.0	107.0	11.0	0.5 ug/L	2 ug/L	3.18 x MDL
	Nickel - STGFAA	200.9	103.8	4.3	Single	Tbl IE	3	10 %	100	20 ug/L	88.0	120.0	16.0	86.0	121.0	86.0	121.0	16.0	0.6 ug/L	2 ug/L	3.18 x MDL
18.	Nitrate - IC	300.0	100.7	5	Single	MCAWW	3	10 %	10000	10 mg/L	82.0	119.0	18.0	80.0	121.0	80.0	121.0	18.0	13 ug/L	50 ug/L	3.18 x MDL
	Nitrate - Cd/Auto	353.2	97.31	7.10	Multi	MCAWW	3	10 %	10000	2.5 mg/L	83.0	112.0	15.0	81.0	113.0	81.0	113.0	15.0		50 ug/L	Range
	Nitrate - ISE	---							10000												
19.	Nitrite - IC	300.0	97.7	5	Single	MCAWW	3	10 %	1000	0.1 ug/L	79.0	116.0	18.0	77.0	118.0	77.0	118.0	18.0	4 ug/L	10 ug/L	3.18 x MDL

Standardized QC and QC Acceptance Criteria for Methods in 40 CFR 141.23(k)(1)

		Data					Specs				IPR			OPR		MS/MSD						
No.	Analyte	Reference Method	Recovery	Precision	Labs	Source	CAL Points	Lin	MCL (ug/L)	Spike conc	Recovery Low	Recovery High	Precision	Recovery Low	Recovery High	Recovery Low	Recovery High	RPD	ML MDL	ML Value	Calc
	Nitrite - Cd/Auto	353.2	97.31	7.10	Multi	MCAWW	3	10 %	1000	2.5 mg/L	83.0	112.0	15.0	81.0	113.0	81.0	113.0	15.0		50 ug/L	Range
	Nitrite - Spec/Auto	---							1000												
	Nitrite - Spec/Auto	---							1000												
20.	O-phosphate - IC	300.0	100.4	3.8	Single	MCAWW	3	10 %	---	500 ug/L	86.0	115.0	14.0	85.0	116.0	85.0	116.0	14.0	61 ug/L	200 ug/L	3.18 x MDL
	O-phosphate - Asc/Auto	365.1	87.2	22	Multi	MCAWW	3	10 %	---	300 ug/L	43.0	132.0	45.0	38.0	136.0	38.0	136.0	44.0		10 ug/L	Range
	O-phosphate - Asc/Sing	---							---												
	O-phosphate - Phos/Mo	---							---												
	O-phosphate - Auto/seg	---							---												
	O-phosphate - Auto/Dis	---							---												
21.	Selenium - Furnace	---							50												
	Selenium - Hydride	---							50												
	Selenium - ICP/MS	200.8	102.48	9.8	Multi	Tbl 12	3	10 %	50	50 ug/L	82.0	123.0	20.0	80.0	125.0	80.0	125.0	20.0	7.9 ug/L	20 ug/L	3.18 x MDL
	Selenium - STGFAA	200.9	88.9	10	Single	Tbl IE	3	10 %	50	25 ug/L	52.0	125.0	36.0	48.0	129.0	48.0	129.0	36.0	0.6 ug/L	2 ug/L	3.18 x MDL
22.	Silica - ICP	200.7	53.86	45.38	Multi	Apx C	5	25 %	---	1 mg/L	d	145.0	91.0	d	154.0	d	154.0	91.0	58 ug/L	200 ug/L	3.18 x MDL
	Silica - Color	---							---												
	Silica - Color/Mo Blue	---							---												
	Silica - Molybdosil	---							---												
	Silica - Heteropoly	---							---												
	Silica - Auto/Mo react	---							---												
23.	Sodium - Flame	---							---												
	Sodium - ICP	200.7	99.77	24.27	Multi	Apx C	5	25 %	---	1 mg/L	51.0	149.0	49.0	46.0	154.0	46.0	154.0	49.0	29 ug/L	100 ug/L	3.18 x MDL
24.	Temperature	---																			
25.	Thallium - ICP/MS	200.8	101.5	14.5	Multi	Tbl 12	3	10 %	2.0	2 ug/L	72.0	131.0	29.0	69.0	134.0	69.0	134.0	29.0	0.3 ug/L	1 ug/L	3.18 x MDL
	Thallium - STGFAA	200.9	95.4	2.8	Single	Tbl IE	3	10 %	2.0	20 ug/L	85.0	106.0	11.0	84.0	107.0	84.0	107.0	11.0	0.7 ug/L	2 ug/L	3.18 x MDL

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(e) The number and type of required tests, testing laboratories, matrices, and replicate QC tests for method validation depend on the tier at which the new or modified wastewater or drinking water method is validated. These requirements are specified at paragraphs (a), (b), (c) of this section and in the table at § 136.5(d).

6. Section 141.40, paragraph (n)(11), is proposed to be amended by revising the table to read as follows:

§ 141.40 Special monitoring for inorganic and organic contaminants.

* * * * *

(n) * * *

(11) * * *

TABLE 141.40(n)(11)

Parameter/methodology	Reference method	Other approved methods		
		EPA	Standard methods 18th ed.[1]	Other
1. aldicarb				
HPLC/Fl	531.1		6610	
2. aldicarb sulfone				
HPLC/Fl	531.1		6610	
3. aldicarb sulfoxide				
HPLC/Fl	531.1		6610	
4. aldrin				
GC/ECD	508.1	505, 508		
GC/MS	525.2			
5. butachlor				
GC/MS	525.2			
GC/NPD	507			
6. carbaryl				
HPLC/Fl	531.1		6610	
7. dicamba				
GC/ECD	515.2	515.1		
HPLC				
12. metribuzin				
GC/ECD	508.1			
GC/MS	525.2			
GC/NPD	507			
13. propachlor				
GC/ECD	508.1	508		
GC/MS	525.2			

Note: The following acronyms are used in this table:
ECD—Electron Capture Detector.
Fl—Fluorescence.
GC—Gas Chromatography.
GC/MS—Gas Chromatography/Mass Spectrometry.
HPLC—High Performance Liquid Chromatography.
NPD—Nitrogen Phosphorous Detector.
UV—Ultraviolet Detector.

* * * * *

[FR Doc. 97–7221 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Friday
March 28, 1997

Part III

Department of Education

Technology Innovation Challenge Grants; Inviting Applications for New Awards for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.303A]

Technology Innovation Challenge Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: The Technology Innovation Challenge Grants Program provides grants to consortia that are working to improve and expand new applications of technology to strengthen the school reform effort, improve student achievement, and provide sustained professional development of teachers, administrators, and school library media personnel.

Eligible Applicants: Only consortia may receive grants under this program. Consortia must include at least one local educational agency (LEA) with a high percentage or number of children living below the poverty line. They may also include other local educational agencies, State educational agencies, institutions of higher education, businesses, academic content experts, software designers, museums, libraries, and other appropriate entities.

Note: In each consortium a participating LEA shall submit the application on behalf of the consortium and serve as the fiscal agent for the grant.

Deadline for Receipt of Applications: May 30, 1997.

Deadline for Intergovernmental Review: July 30, 1997.

Applications Available: March 31, 1997.

Estimated Available Funds: $18,000,000.

Estimated Range of Awards: $500,000 to $1,500,000 per year.

Estimated Average Size of Awards: $900,000 per year.

Estimated Number of Awards: 20.

Project Period: 5 years.

Note: The Department of Education is not bound by any estimates in this notice.

Maximum Award: The Secretary does not consider an application that proposes a budget exceeding $1,500,000 for one or more 12-month budget periods.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except 34 CFR 75.102(b), 75.200(b)(3), 75.210, and 75.217), 77, 79, 80, 81, 82, and 85.

Other Requirements: It is the policy of the Department of Education not to solicit applications before the publication of a final rule. However, in this case it is essential to solicit applications at this time in order to give applicants sufficient time to prepare applications and subsequently to provide sufficient time to review applications and select grantees. A notice of proposed selection criteria, selection procedures, and application procedures was published in the **Federal Register** on February 26, 1997 (62 FR 8687). At this time the Department of Education has received only one nonsubstantive comment in response to that notice. If any substantive changes are made in the final notice, applicants will be given an opportunity to revise or resubmit their applications.

SUPPLEMENTARY INFORMATION: The Technology Innovation Challenge Grants Program is authorized under Title III, section 3136, of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6846). This FY 1997 competition supports the third round of grants under this program.

As catalysts for change, grants under this program support communities of educators, parents, industry partners, and others who are working to transform their schools into information-age learning centers. The Technology Innovation Challenge Grants support the development and innovative use of technology and new learning content in specific communities. Each effort clearly focuses on integrating innovative learning technologies into the curriculum to improve learning productivity in the community.

The Secretary believes that the information superhighway is creating new possibilities for extending the time, the place, and the resources for learning. Technology Innovation Challenge Grant communities can develop first-class learning environments that provide affordable access to quality education and training. Especially promising possibilities are anticipated from a creative synthesis of ideas generated by educators and software developers, telecommunications firms and hardware manufacturers, entertainment producers, and others who are extending the possibilities for creating new learning communities.

Challenge grant communities need not be limited by geography. The information superhighway can be used to create virtual learning communities linking schools, colleges, libraries, museums, and businesses across the country or around the world. Students of all ages, no matter where they live, could tap vast electronic libraries and museums containing text and video images, music, art, and language instruction. They could work with scientists and scholars around the globe who can help them use mapping tools, primary historical documents, or laboratory experiments to develop strong research and problem solving skills.

The Secretary encourages each community to view this competition as an opportunity to act on its most ambitious vision for education reform. It is essential, however, to guard against a future in which some communities have access to vast technological resources, while others do not. Low-income neighborhoods and other areas with the greatest need for technology must not be left behind in the acquisition of knowledge and skills needed for productive citizenship in the 21st century. A failure to include those communities will put their future, and the future of the country, at risk. For this reason, in the final selection of applications for funding the Secretary may consider the extent to which each application demonstrates an effective response to the learning technology needs of areas with a high number or percentage of disadvantaged students or the greatest need for educational technology.

Project Activities: The statute authorizes the use of funds for activities similar to the following activities:

(a) Developing, adapting, or expanding existing and new applications of technology to support the school reform effort.

(b) Funding projects of sufficient size and scope to improve student learning and, as appropriate, support professional development, and provide administrative support.

(c) Acquiring connectivity linkages, resources, and services, including the acquisition of hardware and software, for use by teachers, students, and school library media personnel in the classroom or in school library media centers, in order to improve student learning by supporting the instructional program offered by that agency to ensure that students in schools will have meaningful access on a regular basis to those linkages, resources, and services.

(d) Providing ongoing professional development in the integration of quality educational technologies into school curriculum and long-term planning for implementing educational technologies.

(e) Acquiring connectivity with wide area networks for purposes of accessing information and educational programming sources, particularly with institutions of higher education and public libraries.

(f) Providing educational services for adults and families.

Note: Section 14503 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 8893), is applicable to the Technology Innovation Challenge Grant Program. Section 14503 requires that an LEA, SEA, or educational service agency receiving financial assistance under this program must provide private school children and teachers, on an equitable basis, special educational services or other program benefits under this program. The section further requires SEAs, LEAs, and educational service agencies to consult with private school officials during the design and development of the Technology Innovation Challenge Grant projects. Each application must describe the ways in which the proposed project will address the needs of private school children and teachers.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary has proposed using the following unweighted selection criteria, as described in the notice of proposed selection criteria, selection procedures, and application procedures for this program that will be published in final in a later issue of the **Federal Register**:

(a) *Significance.* The Secretary reviews each proposed project for its significance by determining the extent to which the project—

(1) Offers a clear vision for the use of technology to help all students learn to challenging standards;

(2) Will achieve far-reaching impact through results, products, or benefits that are easily exportable to other settings and communities;

(3) Will directly benefit students by integrating acquired technologies into the curriculum to improve teaching and student achievement;

(4) Will ensure continuous professional development for teachers, administrators, and other individuals to further the use of technology in the classroom, library, or learning settings in the community;

(5) Is designed to serve areas with a high number or percentage of disadvantaged students or other areas with the greatest need for educational technology; and

(6) Is designed to create new learning communities among teachers, students, parents, and others, which contribute to State or local education goals for school improvement, and expand markets for high-quality educational technology or content;

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project will ensure successful, effective, and efficient uses of technologies for educational reform that will be sustainable beyond the period of the grant;

(2) The members of the consortia or other appropriate entities will contribute substantial financial and other resources to achieve the goals of the project; and

(3) The applicant is capable of carrying out the project, as evidenced by the extent to which the project will meet the problems identified; the quality of the project design, including objectives, approaches, evaluation plan, and dissemination plan; the adequacy of resources, including money, personnel, facilities, equipment, and supplies; the qualifications of key personnel who would conduct the project; and the applicant's prior experience relevant to the objectives of the project.

Application Deadline

In order to ensure timely receipt and processing of applications, an application must be received on or before the deadline date announced in this application notice. The Secretary will not consider an application for funding if it is not received by the deadline date unless the applicant can show proof that the application was: (1) sent by registered or certified mail not later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. An applicant must show proof of mailing in accordance with 34 CFR 75.102(d) and (e). Applications delivered by hand must be received by 4:00 p.m. (Eastern Time) on the deadline date. For the purposes of this program competition, the Secretary does not apply 34 CFR 75.102(b) which requires an application to be mailed, rather than received, by the deadline date.

Note: All applications must be received on or before the deadline date. This requirement takes exception to EDGAR, 34 CFR 75.102. In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, this amendment makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required.

FOR APPLICATIONS OR INFORMATION CONTACT: Telephone 1–800–USA–LEARN (1–800–872–5327) for applications. For information contact Technology Innovation Challenge Grants, U.S. Department of Education, Washington, D.C. 20202–5544. Telephone (202) 208–3882. Individuals may fax requests for applications to: (202) 208–4042. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between the hours of 8 a.m. and 8 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 6846.

Dated: March 24, 1997.

Marshall Smith,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 97–7905 Filed 3–27–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
March 28, 1997

Part IV

Postal Service

39 CFR Part 111

Address Correction Information; Final Rule

POSTAL SERVICE

39 CFR Part 111

Address Correction Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service to change the ancillary service endorsements that mailers use to request an addressee's new address and to provide the Postal Service with instructions on how to handle undeliverable-as-addressed (UAA) mail. These new endorsements provide a simpler and more consistent system than the one currently in place.

Only four endorsements will be available. Endorsements will consist of one keyword: ''Address,'' ''Forwarding,'' ''Return,'' or ''Change,'' followed by the two words ''Service Requested.'' The endorsements will be the same for all classes of mail, but the treatment for each class and applicable charges will generally remain the same as the treatment under the current system of endorsements.

DATES: This final rule is effective July 1, 1997. Comments as allowed herein must be received on or before April 14, 1997.

ADDRESSES: Mail or deliver written comments to the Manager, Address Management, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 7431, Washington, DC 20260–6802. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Rocky Matthews, (202) 268–5790.

SUPPLEMENTARY INFORMATION: On October 10, 1996, the Postal Service published for public comment in the **Federal Register** (61 FR 53280–53285) a proposed rule to change the ancillary service endorsements that mailers use to request an addressee's new address and to provide the Postal Service with instructions on how to handle undeliverable-as-addressed (UAA) mail. This final rule contains the DMM standards adopted by the Postal Service. Changes introduced since publication of the proposed rule are enumerated in section A. Responses to public comments are provided in section B.

The provision for which comments are solicited is the new standard applied to the treatment of unendorsed UAA Single-Piece Standard Mail as described in section A.1 and discussed in section B.2 of this supplementary information.

After considering the potential effect of this provision, the Postal Service has determined to allow 15 days for public comment. First, mailers should have little difficulty evaluating the effect of this provision on their operations and preparing comments in a short period. Second, the Postal Service wants to ensure that mailers have sufficient time after the close of the comment period and publication of any possible revision to this final rule to make necessary changes to their operations before the July 1, 1997, implementation date. After review of the comments received, the Postal Service will modify the corresponding standard if such modification is determined to be appropriate.

A. Changes and Additions Since Publication of Proposed Rule

This section identifies additions and changes to the final DMM ancillary service endorsements that have been drafted in response to comments on the proposed rules.

1. A fourth ancillary service endorsement, ''Forwarding Service Requested,'' is added. For First-Class Mail and Standard Mail (B), the optional use of this endorsement ensures that UAA pieces receive the same treatment accorded these classes of mail not bearing this or any other endorsement. For Standard Mail (A), this endorsement provides for the forwarding and return of mail without requiring a separate address correction notification.

2. The ''Change Service Requested'' endorsement is restricted within First-Class Mail to electronic Address Change Service (ACS) participants only. This restriction is sensible, because it limits this service to mailers who are most likely to be familiar with the consequences of electing this option—that is, disposal of UAA pieces bearing this endorsement. The mailer receives a separate notice of an address change or reason for nondelivery.

3. Unendorsed single-piece rate Standard Mail (A) that is undeliverable as addressed will be discarded by the Postal Service. An endorsement is required on the piece if forwarding or return is desired.

B. Summary of Comments

The Postal Service received 16 pieces of correspondence offering comments on the proposed rule. Respondents included major mailer associations, marketing groups, individual publishers, presort bureaus, government agencies, and other major mailers. The specific points raised in the comments are presented in the following paragraphs.

Five comments were received regarding the proposed effective date. Most of the commenters asked for more time before implementation of the new ancillary service endorsements, requesting that the final rules become effective no earlier than May 1, 1997. Several commenters recommended that the Postal Service consider implementing the change to coincide with July 1, 1997, which is the effective date for the Classification Reform move update requirement for addresses used on presorted and automation First-Class Mail. In response, the Postal Service has postponed the effective date of this rulemaking to July 1, 1997.

Five commenters stated that by eliminating the option of using the endorsement ''Do Not Forward,'' Standard Mail (A) mailers were being forced to accept the return of Single-Piece Standard Mail and pay postage due. Currently, Single-Piece Standard Mail bearing no endorsement is returned to sender; all other Standard Mail (A) without an endorsement is neither forwarded nor returned. Two commenters suggested that all unendorsed Standard Mail (A) be given the same treatment. The Postal Service agrees. The current exception for Single-Piece Standard Mail is eliminated. All unendorsed Standard Mail (A) that is undeliverable as addressed will be discarded by the Postal Service. If forwarding or return is desired, Single-Piece Standard Mail will have to bear an endorsement.

Six commenters indicated that by eliminating the option of using the endorsement ''Forwarding and Return Postage Guaranteed,'' Standard Mail (A) mailers were being forced to receive unwanted address correction notices. Several commenters noted that Standard Mail (A), unlike the other mail classes, is not provided any forwarding or return treatment if it lacks an ancillary service endorsement. In response to these comments and concerns, the Postal Service has added ''Forwarding Service Requested'' as a fourth ancillary service endorsement. This endorsement will replace the current ''Forwarding and Return Postage Guaranteed'' endorsement and provide the same treatment.

Six commenters questioned the need for the ''Change Service Requested'' option for First-Class Mail and believed that the disposal of UAA First-Class Mail should not be permitted. They believed that this option could cause confusion over when it is appropriate to discard UAA First-Class Mail. In response, the Postal Service will make this endorsement option available only to electronic Address Change Service

(ACS) participants. Only after the Computerized Forwarding System (CFS) clerk is able to confirm the ACS participation code will the Postal Service honor the ''Change Service Requested'' endorsement. The CFS will then transmit an electronic notification and generate a label directing that the UAA mailpiece should be discarded by the Postal Service. This limited access will ensure that only mailers most familiar with this service will receive it.

Six commenters requested additional options that are beyond the scope of this rulemaking process. These requests entail changes in rates, rate structure, and product definitions that are beyond the scope of this rulemaking.

Under the new rule, only four ancillary service endorsements will be available. Endorsements will consist of one keyword: ''Address,'' ''Forwarding,'' ''Return,'' or ''Change,'' followed by the two words ''Service Requested.'' The endorsements will be the same for all classes of mail. Treatment for each class of mail and applicable charges will remain unchanged with the following exceptions:

1. *First-Class Mail.* All current treatment options will remain available. In addition, a new option will be available for requesting that UAA mailpieces not be forwarded or returned, but that the mailer be provided with a separate address correction, subject to the address correction fee. This new option will be available under the endorsement ''Change Service Requested.'' For First-Class Mail, this option will be available only via electronic Address Change Service (ACS) participation.

2. *Standard Mail (A) Single-Piece Rate.* Currently, a mailer has the option of endorsing the mailpiece ''Do Not Forward'' to request that the Postal Service discard the piece if it is undeliverable, with no forwarding, no return, and no address correction provided. Under the new rule, the treatment given to pieces bearing this endorsement will become the default method of handling unendorsed UAA Single-Piece Standard Mail. Thus, Single-Piece Standard Mail mailers not desiring forwarding will be able to choose among three options: (a) using no endorsement, in which case a UAA piece (if uninsured) will be discarded if it is undeliverable; (b) using the endorsement ''Return Service Requested,'' in which case a UAA piece will be returned with the new address or reason for nondelivery attached, subject to return postage at the single-piece rate; or (c) using the endorsement ''Change Service Requested,'' in which case a UAA piece will be discarded and the mailer provided with a separate notice of new address or reason for nondelivery, subject to the address correction fee.

3. *Standard Mail (A).* Currently, if a UAA mailpiece weighing 1 ounce or less is endorsed ''Address Correction Requested,'' the piece is returned to the mailer with the new address or reason for nondelivery, subject to return postage at the single-piece rate; any heavier UAA piece bearing that endorsement is discarded and the mailer is provided with a separate notice of the new address or reason for nondelivery, subject to the address correction fee. Under the new rule, the Postal Service will no longer make distinctions based on the weight of the piece. Regardless of weight, any UAA piece with the endorsement ''Change Service Requested'' will receive the treatment currently accorded to a piece weighing more than 1 ounce—that is, the Postal Service will discard UAA pieces and provide the mailer with separate notices of new address or reason for nondelivery, subject to the address correction fee. The endorsement ''Return Service Requested'' will provide, regardless of weight, for the return of UAA pieces to the mailer with the new address or reason for nondelivery, subject to the appropriate single-piece rate postage.

4. *Standard Mail (B).* Currently, a mailer has the option of endorsing the mailpiece ''Do Not Forward, Do Not Return'' to request that the Postal Service discard the piece if it is undeliverable, with no forwarding, no return, and no address correction provided. Under the new rule, this option will no longer be available. Instead, a mailer will be able to use the endorsement ''Change Service Requested,'' in which case the Postal Service will discard UAA pieces and provide the mailer with separate notices of new address or reason for nondelivery, subject to the appropriate address correction fee.

The following tables summarize the current and new (effective July 1, 1997) ancillary service endorsements, along with the corresponding treatment of undeliverable-as-addressed (UAA) mail bearing those endorsements.

BILLING CODE 7710–12–P

First-Class Mail, Priority Mail, and Express Mail

CURRENT		NEW (effective July 1, 1997)	
Mailer Endorsement	USPS Action on UAA Pieces	Mailer Endorsement	USPS Action on UAA Pieces
"Forwarding and Address Correction Requested" or **"Forward & Address Correction"**	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.	**"Address Service Requested"**	No change in USPS action.
		"Forwarding Service Requested"	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge. Note: Same USPS action as no endorsement.
"Address Correction Requested" or **"Do Not Forward"**	Mailpiece returned with new address or reason for nondelivery attached; no charge.	**"Return Service Requested"**	No change in USPS action.
		"Change Service Requested"* *First-Class Mail only available via electronic ACS participation.	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS. Not available for Priority Mail or Express Mail. Not available for mail with special services (e.g., certified or registered mail).
no endorsement	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.	no endorsement	No change in USPS action.

Periodicals

CURRENT		NEW (effective July 1, 1997)	
Mailer Endorsement	USPS Action on UAA Pieces	Mailer Endorsement	USPS Action on UAA Pieces
"Return Postage Guaranteed"	First 60 days: mailpiece forwarded; no charge. After 60-day period, or if undeliverable: mailpiece returned with address correction or reason for nondelivery attached; appropriate Standard Mail single-piece rate charged.	**"Address Service Requested"**	No change in USPS action.
		"Forwarding Service Requested"	Not available for Periodicals.
		"Return Service Requested"	Not available for Periodicals.
		"Change Service Requested"	Not available for Periodicals.
no endorsement	First 60 days: mailpiece forwarded; no charge. After 60-day period, or if undeliverable: separate address correction or reason for nondelivery provided; address correction fee charged; mailpiece disposed of by USPS.	no endorsement	No change in USPS action.

Standard Mail (A)

CURRENT		NEW (effective July 1, 1997)	
Mailer Endorsement	USPS Action on UAA Pieces	Mailer Endorsement	USPS Action on UAA Pieces
"Forwarding and Return Postage Guaranteed, Address Correction Requested" or **"Forward & Address Correction"**	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged). After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).	**"Address Service Requested"**	No change in USPS action.
"Forwarding and Return Postage Guaranteed"	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged). After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).	**"Forwarding Service Requested"**	No change in USPS action.
"Do Not Forward, Address Correction Requested, Return Postage Guaranteed" or **"Do Not Forward — Address Cor — Return Guar"**	Mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged).	**"Return Service Requested"**	No change in USPS action.
"Address Correction Requested"	If mailpiece 1 ounce or less: entire piece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged). If mailpiece over 1 ounce: address correction or reason for nondelivery provided by Form 3547; subject to address correction fee.	**"Change Service Requested"**	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS. Note: if return of the mailpiece is desired, use "Return Service Requested," subject to appropriate Standard Mail (A) single-piece rate.
"Do Not Forward"	No forwarding or return service provided.		Not available (use no endorsement).
no endorsement	*Single-Piece Rate Mail Only:* mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged). *Bulk Rate Mail Only:* mailpiece disposed of by USPS.	no endorsement	Mailpiece disposed of by USPS. (No exception for *Single-Piece Rate Mail.*) *Single-Piece Rate Mail* must be endorsed if forwarding or return is desired.

Standard Mail (B)

CURRENT		NEW (effective July 1, 1997)	
Mailer Endorsement	USPS Action on UAA Pieces	Mailer Endorsement	USPS Action on UAA Pieces
"Forwarding and Return Postage Guaranteed, Address Correction Requested" or **"Forward & Address Correction"**	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).	**"Address Service Requested"**	No change in USPS action.
"Forwarding and Return Postage Guaranteed"	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).	**"Forwarding Service Requested"**	No change in USPS action. Note: Same USPS action as no endorsement.
"Do Not Forward, Address Correction Requested, Return Postage Guaranteed" or **"Do Not Forward — Address Cor — Return Guar"**	Mailpiece returned with new address or reason for nondelivery attached; only return postage at appropriate single-piece rate charged (address correction fee not charged).	**"Return Service Requested"**	No change in USPS action.
"Do Not Forward, Do Not Return, Address Correction Requested" or **"Do Not Forward or Return — Address Cor"**	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.	**"Change Service Requested"**	No change in USPS action.
"Do Not Forward, Do Not Return"	No forwarding or return service provided; mailpiece disposed of by USPS.		Not available (use "Change Service Requested").
no endorsement	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).	no endorsement	No change in USPS action.

BILLING CODE 7710–12–C

The new ancillary service endorsements take effect July 1, 1997. The Postal Service will honor current endorsements for a period of 6 months after that date, with the exception of mail bearing no endorsement. Unendorsed mail received after July 1, 1997, will be handled under the new system that takes effect July 1, 1997.

After January 1, 1998, the current endorsements and endorsements other than those adopted will be deemed invalid. For mail bearing invalid endorsements, the service under ''Address Service Requested'' or ''Return Service Requested'' will be provided to such mail as appropriate. Specifically, if a mailpiece bears an endorsement that implies that forwarding service was desired, ''Address Service Requested'' will be provided. If a mailpiece bears an endorsement that implies that no forwarding was desired, ''Return Service Requested'' will be provided.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the Domestic Mail Manual as set forth below:

A ADDRESSING

A000 Basic Addressing

A010 General Addressing Standards

* * * * *

4.0 RETURN ADDRESS

* * * * *

4.2 Ancillary Services

[Amend 4.2 by replacing ''(e.g., ''Return Postage Guaranteed'')'' in the first sentence with ''(e.g., ''Return Service Requested'')'' to read as follows:]

The USPS uses the return address to provide ancillary services requested by the mailer (e.g., ''Return Service Requested'').* * *

* * * * *

7.0 ADDITIONAL STANDARDS FOR PERIODICALS

* * * * *

7.4 Return Address

[Amend 7.4 by replacing ''Return Postage Guaranteed'' with ''Address Service Requested'' to read as follows:]

The return address must appear on any mailing wrapper that is endorsed ''Address Service Requested.''

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A900 Customer Support

A910 Mailing List Services

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6.0 ELECTION BOARDS AND VOTER REGISTRATION COMMISSIONS

6.1 General

[Amend 6.1 by replacing ''Address Correction Requested'' with ''Return Service Requested'' to read as follows:]

Election boards or voter registration commissions may use the ''Return Service Requested'' endorsement and/or the National Change of Address (NCOA) system to maintain current address lists.

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E ELIGIBILITY

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E100 First-Class Mail

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E130 Nonautomation Rates

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3.0 PRESORTED RATE

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3.3 Address Quality

[Amend 3.3 by replacing in the first sentence ''(e.g., the ''Address Correction Requested'' endorsement, ACS, or NCOA)'' with ''(e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA))'' to read as follows:]

Effective July 1, 1997, addresses on all pieces claimed at the Presorted rate must be updated within 180 days before the mailing date by a USPS-approved address update tool (e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA)).

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E140 Automation Rates

1.0 BASIC STANDARDS

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1.3 Address Quality

[Amend 1.3 by replacing in the first sentence ''(e.g., the ''Address Correction Requested'' endorsement, ACS, or NCOA)'' with ''(e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA))'' to read as follows:]

Effective July 1, 1997, addresses on all pieces claimed at automation rates must be updated within 180 days before the mailing date by a USPS-approved address update tool (e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA)).

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F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010

Basic Information

* * * * *

[Revise heading of 5.0 to read as follows:]

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 Priority Mail and First-Class Mail

* * * * *

PRIORITY MAIL AND FIRST-CLASS MAIL

Mailer endorsement	USPS action on UAA pieces
''Address Service Requested''[1]	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
''Forwarding Service Requested''	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
''Return Service Requested''	Mailpiece returned with new address or reason for nondelivery attached; no charge.

PRIORITY MAIL AND FIRST-CLASS MAIL—Continued

Mailer endorsement	USPS action on UAA pieces
"Change Service Requested"[2]	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.
Option available only via electronic Address Change Service (ACS) and only for letters and sealed parcels and postal and postcard subclasses.	Not available for Priority Mail or mail with special services (e.g., certified or registered mail).
No endorsement	Same as USPS action for "Forwarding Service Requested."

[1] Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.
[2] Valid only for Address Change Service (ACS) participating First-Class mailpieces.

5.2 Periodicals

Undeliverable Periodicals publications (including publications pending Periodicals authorization) are treated as described in the chart below and under these conditions:

* * * * *

e. The publisher may request the return of copies of undelivered Periodicals publications by printing the endorsement ''Address Service Requested'' on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. The per piece rate charged for return is the appropriate Standard Mail single-piece rate. When the address correction is provided incidental to the return of the piece, there is no charge for the correction. This endorsement obligates the publisher to pay return postage.

* * * * *

PERIODICALS

Mailer endorsement	USPS action on UAA pieces
"Address Service Requested"[1]	First 60 days: mailpiece forwarded; no charge. After 60-day period, or if undeliverable: mailpiece returned with address correction or reason for nondelivery attached; appropriate Standard Mail single-piece rate charged.
"Forwarding Service Requested"	Not available for Periodicals.
"Return Service Requested"	Not available for Periodicals.
"Change Service Requested"	Not available for Periodicals.
No endorsement[1]	First 60 days: mailpiece forwarded; no charge. After 60-day period, or if undeliverable: separate address correction or reason for nondelivery provided; address correction fee charged; mailpiece disposed of by USPS.

[1] Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.3 Standard Mail (A)

Undeliverable Standard Mail (A) is treated as described in the chart below and under these conditions:

a. Insured Standard Mail (A) is treated as though endorsed ''Address Service Requested.''

* * * * *

e. When a large volume of identical-weight pieces originates from a single mailer and is endorsed ''Return Service Requested,'' the USPS may use the weight of a sample of at least 25 pieces and divide that weight by the number of pieces in the sample. After the average per piece weight is determined, the pieces are weighed in bulk to determine the number of pieces subject to the single-piece rate for return. Pieces of identical weight counted in this manner, regardless of weight, are returned to the sender with the new address or the reason for nondelivery endorsed on the piece.

f. The weighted fee is the appropriate Standard Mail (A) single-piece rate, multiplied by a factor of 2.472 and rounded up to the next whole cent (if the computation yields a fraction of a cent). The weighted fee is computed (and rounded if necessary) for each mailpiece individually. Neither the applicable postage, the factor, nor any necessary rounding is applied cumulatively to multiple pieces. The fee is charged when an unforwardable or undeliverable piece is returned to the sender and the piece bears the endorsement ''Address Service Requested'' or ''Forwarding Service Requested.'' Use of these endorsements obligates the sender to pay the weighted fee on any returns.

* * * * *

STANDARD MAIL (A)

Mailer endorsement	USPS action on UAA pieces
"Address Service Requested"[1]	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged). After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).
"Forwarding Service Requested"	Months 1 through 12: mailpiece forwarded; no charge. Months 13 through 18: mailpiece returned with new address attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).

STANDARD MAIL (A)—Continued

Mailer endorsement	USPS action on UAA pieces
	After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; only Standard Mail (A) weighted fee charged (address correction fee not charged).
''Return Service Requested''	Mailpiece returned with new address or reason for nondelivery attached; only return postage at Standard Mail (A) single-piece rate charged (address correction fee not charged).
''Change Service Requested'' [1]	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.
No endorsement	Mailpiece disposed of by USPS. (No exception for Single-Piece Standard Mail.) Single-Piece Standard Mail must be endorsed if forwarding or return is desired.

[1] Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.4 Standard Mail (B)

* * * * *

STANDARD MAIL (B)

Mailer endorsement	USPS action on UAA pieces
''Address Service Requested'' [1]	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).
''Forwarding Service Requested''	Months 1 through 12: mailpiece forwarded locally at no charge; forwarded out of town as postage due. Months 13 through 18: mailpiece returned with new address attached; only return postage at appropriate single-piece rate charged (address correction fee not charged). After month 18, or if undeliverable, or addressee refused to pay postage due: mailpiece returned with reason for nondelivery attached; only forwarding (where attempted) and return postage at appropriate single-piece rate charged (address correction fee not charged).
''Return Service Requested''	Mailpiece returned with new address or reason for nondelivery attached; only return postage at appropriate single-piece rate charged (address correction fee not charged).
''Change Service Requested'' [1]	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged; mailpiece disposed of by USPS.
No endorsement	Same as USPS action for ''Forwarding Service Requested.''

[1] Valid for all mailpieces, including Address Change Service (ACS) participating mailpieces.

5.5 Express Mail

* * * * *

EXPRESS MAIL

Mailer endorsement	USPS action on UAA pieces
''Address Service Requested''	Months 1 through 12: mailpiece forwarded; no charge; separate notice of new address provided; address correction fee charged. Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
''Forwarding Service Requested''	Months 1 through 12: mailpiece forwarded; no charge.
	Months 13 through 18: mailpiece returned with new address attached; no charge. After month 18, or if undeliverable: mailpiece returned with reason for nondelivery attached; no charge.
''Return Service Requested''	Mailpiece returned with new address or reason for nondelivery attached; no charge.
''Change Service Requested''	Not available for Express Mail.
No endorsement	Same as USPS action for ''Forwarding Service Requested.''

6.0 ENCLOSURES OR ATTACHMENTS

6.1 Periodicals

[Amend 6.1 by replacing ''Return Postage Guaranteed.'' with ''Address Service Requested.'' in the last sentence to read as follows:]

* * * Undeliverable Periodicals publications (including publications pending Periodicals authorization) with an incidental First-Class Mail attachment or enclosure are treated as dead mail unless endorsed ''Address Service Requested.''

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F020 Forwarding

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3.0 POSTAGE FOR FORWARDING

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3.5 Standard Mail (A)

[Amend 3.5 by replacing ''address correction service endorsement'' with ''ancillary service endorsement'' and ''(e.g, ''Special Standard Mail Rate, Forwarding and Return Postage Guaranteed'')'' with ''(e.g., ''Special Standard Mail Rate, Forwarding Service Requested'')'' to read as follows:]

Standard Mail (A) is subject to collection of additional postage from the mailer when forwarding and return service is provided. Mail that qualifies for a single-piece Standard Mail (B) rate is returned at that rate if the mailer's ancillary service endorsement specifies the Standard Mail (B) rate (e.g., ''Special Standard Mail Rate, Forwarding Service Requested'').

3.6 Standard Mail (B)

[Amend 3.6 by replacing ''Do Not Forward, Do Not Return'' in the second sentence with ''Change Service Requested'' to read as follows:]

Standard Mail (B) is subject to the collection of additional postage at the applicable rate for nonlocal forwarding if guaranteed by the sender. Unless endorsed ''Change Service Requested,'' all Standard Mail (B) is delivered as directed without additional postage charge when the old and new addresses are served by the same post office. The addressee may refuse any piece of Standard Mail (B) that has been forwarded. This refusal does not revoke the right to have other Standard Mail (B) forwarded. If the addressee does not want to pay forwarding postage for all Standard Mail (B), the addressee must ask the postmaster of the new address to use Form 3546 to notify the postmaster of the old address to discontinue the forwarding of Standard Mail (B).

* * * * *

F030 Address Correction, Address Change, and Return Services

1.0 ADDRESS CORRECTION SERVICE

1.1 Purpose

[Revise 1.1 to read as follows:]

If mail cannot be delivered as addressed, address correction service allows the sender on request, using the appropriate ancillary service endorsement under F010, to obtain the addressee's new (forwarding) address (if the addressee filed a change-of-address order with the USPS) or the reason for nondelivery. Address correction service is available alone or in combination with forwarding and return service.

[Redesignate current 1.2 through 1.4 as 1.3 through 1.5, respectively; add new 1.2 to read as follows:]

1.2 Invalid Endorsement

Any obsolete ancillary service endorsement or similar sender endorsement not shown in F010 is considered invalid for address correction service. A mailpiece bearing an invalid endorsement is handled as follows:

a. If forwarding service is implied, ''Address Service Requested'' is provided.

b. If forwarding is not implied, ''Return Service Requested'' is provided.

* * * * *

3.0 SENDER INSTRUCTION

3.1 Mail Not Forwarded

[Amend 3.1 by revising 3.1b to read as follows:]

The following types of mail are not forwarded:

* * * * *

b. Mail showing specific instructions of the sender (e.g., ''Return Service Requested'' or ''Change Service Requested'').

* * * * *

3.2 Special Services

[Amend 3.2 by revising 3.2d to read as follows:]

A change-of-address order covers certified, collect on delivery (COD), insured, registered, and return receipt for merchandise mail unless the sender gives other instructions or the addressee moves outside the United States. This mail is treated as follows:

* * * * *

d. Insured Standard Mail (A) without any other endorsement is treated as though endorsed ''Forwarding Service Requested.'' The USPS forwards the mail and, if still undeliverable as addressed, returns it to the sender with the new address or reason for nondelivery attached.

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G GENERAL INFORMATION

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G090 Experimental Classifications and Rates

G091 Barcoded Small Parcels

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4.0 ADDRESS INFORMATION

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4.3 Address Quality

[Amend 4.3 by replacing in the first sentence ''(e.g., the ''Address Correction Requested'' endorsement, ACS, or NCOA)'' with ''(e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA))'' to read as follows:]

Effective July 1, 1997, addresses on all pieces claimed at automation rates must be updated within 180 days before the mailing date by a USPS-approved address update tool (e.g., appropriate ancillary service endorsement under F010, Address Change Service (ACS), or National Change of Address (NCOA)).

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P POSTAGE AND PAYMENT METHODS

P000 Basic Information

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P020 Postage Stamps and Stationery

P021 Stamped Stationery

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2.0 PERSONALIZED STAMPED ENVELOPE

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[Revise 2.5 to read as follows:]

2.5 Optional Information

The following endorsements and instructions printed in at least 8-point type may be included as part of the return address:

a. Any ancillary service endorsement under F010 that requests address correction, forwarding, or return appropriate for the intended class of mail (e.g., ''Address Service Requested''). The endorsement must appear directly below the return address, separated with a minimum clear space of 1/4 inch.

b. Any sender instruction under F030 that specifies a period for holding mail, not fewer than 3 and not more than 30

days (e.g., ''AFTER 5 DAYS RETURN TO''). The instruction must appear directly above the return address. If such an instruction is printed on envelopes at Standard Mail (A) rates, those envelopes must also bear an authorized ancillary service endorsement that provides for return postage.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–7952 Filed 3–25–97; 3:13 pm]

BILLING CODE 7710–12–P

federal register

Friday
March 28, 1997

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Rangeland Research Grants Program (FY 1997) Applications Solicitation; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Rangeland Research Grants Program for Fiscal Year 1997; Solicitation of Applications

AGENCY: Cooperative State Research, Education and Extension Service

ACTION: Notice of application.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is announcing the solicitation for proposals for Fiscal Year 1997 for standard grants for basic studies in certain areas of rangeland research.

DATES: Applications must be received on or before May 12, 1997. Proposals received after May 12, 1997 will not be considered for funding.

ADDRESSES: Proposals must be submitted to the following address: Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals, including those submitted through an express mail or a courier service, must be submitted to the following address: Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024. The telephone number is: (202) 401–5048.

FOR FURTHER INFORMATION CONTACT: Paul McCawley; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, SW; Washington, DC 20250–2210; telephone (202) 401–5620 or (202) 401–4141; Internet: pmccawley@reeusda.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research, Education, and Extension Service (CSREES) of the United States Department of Agriculture (USDA) will award standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program during fiscal year 1997 is $449,231.

Eligibility and Limitations on Use of Funds

Under this program, subject to the availability of funds, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary. Except in the case of Federal laboratories, each grant recipient shall match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching fund requirement.

Section 712 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Pub. L. 104–180, prohibits CSREES from paying indirect costs on research grants that exceed 14 percent of total Federal funds provided for each award under this program. In addition, section 716 of that Act provides that, in the case of any equipment or product that may be authorized to be purchased with funds appropriated under that Act, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401, as amended (61 FR 27752, May 31, 1996), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, other Federal statutes and regulations, including the Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, 7 CFR part 3019, and the Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051, apply to this program.

Specific Areas of Research To Be Supported in Fiscal Year 1997

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSREES regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one or more of these categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6(a)(2))

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, ''NEPA Exclusions Form'' must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions and the reasons therefor. If it is the applicant's opinion that the proposed project falls within one or more of the categorical exclusions, the specific exclusion(s) must be identified. The information submitted shall be identified in the Table of Contents as ''NEPA Considerations'' and Form CSREES–1234 and supporting documentation shall be placed after the Form CSREES–661, ''Application for Funding,'' in the proposal.

Even though a project may fall within one or more of the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

How to Obtain Application Materials

Copies of this solicitation, the Application Kit, and the Administrative Provisions for this program (7 CFR part 3401, as amended (61 FR 27752, May 31, 1996)) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; STOP 2245; 1400 Independence Avenue, SW; Washington, DC. 20250–2245; Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number, to psb@reeusda.gov which states that you want a copy of the application materials for the Fiscal Year 1997 Rangeland Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What to Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401, as amended (61 FR 27752, May 31, 1996). Proposals submitted by organizations other than Federal laboratories shall state how the 50 percent non-Federal funding requirement will be met.

Each copy of each proposal must include a Form CSREES–661, ''Application for Funding.'' Applicants should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSREES–661 and the other required forms and certifications are contained in the Application Kit.)

Grant proposals shall be limited to 10 pages (single-spaced and typed on one side of the page only), exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s), and other professional personnel.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When to Submit Applications for Funding

To be considered for funding during Fiscal Year 1997, proposals must be submitted by May 12, 1997.

Proposals submitted through the regular mail must be postmarked by May 12, 1997, and should be sent to the following address: Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; US Department of Agriculture; STOP 2245; 1400 Independence Avenue SW.; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals, including those submitted through an express mail or a courier service, must be received at the following address by May 12, 1997: Proposal Services Unit; Grants Management Branch; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street SW.; Washington, DC 20024. The telephone number is: (202) 401–5048.

SUPPLEMENTARY INFORMATION: The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524–0022 and 0524–0033.

Done at Washington, DC, this 24th day of March 1997.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–7864 Filed 3–27–97; 8:45 am]

BILLING CODE 3410–22–P

federal register

Friday
March 28, 1997

Part VI

General Services Administration

Department of Defense

National Aeronautics and Space Administration

FAR Secretariat; Federal Acquisition Regulation Reissue; Notice

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FAR Secretariat; Federal Acquisition Regulation Reissue

AGENCY: General Services Administration (GSA), Department of Defense (DOD), and National Aeronautics and Space Administration (NASA).

ACTION: Correction to Notice of Reissue of the Federal Acquisition Regulations.

This notice supersedes the previous reissue information published in the **Federal Register** at 69 FR 13259, March 19, 1997.

TO: All Federal Departments and Agencies

SUBJECT: Procedure for Ordering the 1997 Edition of the Federal Acquisition Regulation through the Government Printing Office; CORRECTION

The Federal Acquisition Regulation (FAR) 1997 Reissue will be distributed in May 1997. The 1990 edition of the FAR will then be obsolete. A reissue is a revised basic publication, i.e., a new edition with Federal Acquisition Circular (FAC) numbers deleted and pages renumbered.

To obtain copies of the reissue, please have your printing office prepare a printing and binding requisition, Standard Form 1, and deliver to the Government Printing Office (GPO) by April 11, 1997. On your requisition, state Federal Acquisition Regulation, 1997 Reissue, in two volumes. Your order will ride GSA Requisition Number 7–89025, GPO Jacket Number 424–496. All production costs will be pro-rated to participating Federal departments and agencies. The cost is approximately $10 per set.

To maintain an up-to-date FAR, subscribers need the reissue document and the FAC's that update it. To obtain these FAC's, Federal subscribers should submit a separate open requisition annually to GPO through their agency printing offices. The cost of an average FAC is 75 cents when the requisition rides GSA's requisition for this material.

Those agencies who do not submit their requirement by April 11, 1997, will have to purchase their copies from the Superintendent of Documents at a significantly increased cost per copy. Remember, the FAR is a valuable tool for contracting personnel and many of them may want to maintain their own copy. Printing offices may want to order extra stock to accommodate new employees requests.

If you have any questions, please call the Superintendent of Documents Subscription Desk at (202) 512–1806.

Dated: March 25, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–7983 Filed 3–27–97; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Friday
March 28, 1997

Part VII

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives Regulation: Reformulated Gasoline Covered Areas Provision Modification; Proposed Rule Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5803–5]

Regulation of Fuels and Fuel Additives: Modification of the Covered Areas Provision for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to modify 40 CFR 80.70(k) of the reformulated gasoline (RFG) regulations to allow states to opt into the RFG program for any area classified as a marginal, moderate, serious or severe ozone nonattainment area as of November 15, 1990, the date of the enactment of the Clean Air Act Amendments of 1990 (1990 Amendments), or any time later. This section currently provides that any area classified as a marginal, moderate, serious or severe ozone nonattainment area may be included in the RFG program on petition by the Governor of the State in which the area is located. Today's action will expand this provision to allow states to opt into the RFG program for areas which had been previously classified as marginal, moderate, serious or severe for ozone, but were subsequently redesignated to attainment. This will provide states an additional effective option that may be used to avoid the air quality problems that can lead to a violation of air quality standards. Allowing states to opt into the RFG program for these previously classified ozone nonattainment areas will help to ensure that these areas continue to achieve and maintain compliance with the ozone standard.

DATES: Comments on this proposed rule must be received by April 28, 1997.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–96–30, at Air Docket Section, U.S. Environmental Protection Agency, Waterside Mall, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460 (telephone 202/260–7540, fax 202/260–4400). The Agency requests that commenters also send a copy of any comments to Karen Smith at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Documents may be inspected at the Air Docket Section between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Karen Smith, Policy Analyst, Fuels and Energy Division, US EPA, 401 M Street, S.W. (6406J), Washington, D.C. 20460. (202) 233–9674.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which produce, import or distribute gasoline for sale in areas formerly classified as marginal, moderate, serious or severe ozone nonattainment areas which opt into the RFG program, and retail gasoline stations located in those areas. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company or facility may potentially be regulated by this action, you should carefully examine the applicability criteria of Part 80, Subpart D, of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Availability on the TTNBBS

A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS). The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated Gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTINDFR.ZIP. To download this file, type the following instructions and transfer according to the appropriate software on your computer:
<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

The remainder of this preamble is organized into the following sections:

I. Background
II. Modification of § 80.70(k)
III. Compliance with the Regulatory Flexibility Act
IV. Administrative Designation
V. Paperwork Reduction Act
VI. Unfunded Mandates Act
VII. Statutory Authority

I. Background

Section 107(d) of the Clean Air Act, as amended in 1990 (the Act), requires states to identify all areas that do not meet the national ambient air quality standards (NAAQS) for ozone, and directs EPA to designate these areas as ozone nonattainment areas. Section 181 of the Act requires EPA to classify each area designated as an ozone nonattainment area pursuant to section 107(d) as a marginal, moderate, serious, severe or extreme area, based on the design value for the area. Using this section 181 scheme, EPA classified all areas that were designated as in nonattainment for ozone at the time of the enactment of the 1990 Amendments, except for certain ''nonclassifiable'' areas.[1] 56 FR 56694 (November 6, 1991).

[1] ''Nonclassifiable'' areas include: ''transitional'' areas, defined in section 185A of the Act as areas which were designated as ozone nonattainment areas as of the date of enactment of the 1990 Amendments, but which had not violated the primary NAAQS for ozone over the 3-year period from 1987–1989; ''submarginal'' areas, defined by EPA as those areas which had violated the ozone NAAQS during the period 1987–1989, but had design values less than the lower limit for marginal areas due to an adjustment for missing data when

Areas that were designated as in attainment for ozone as of the date of the 1990 Amendments were categorized as ''unclassifiable/attainment.''

Section 211(k)(5) of the Act prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any RFG covered area. Section 211(k)(6) of the Act, as amended in 1990, provides that, upon the application of the Governor of a State, the Administrator shall apply the prohibition contained in section 211(k)(5) in any area in the State classified under Section 181 of the Act as a marginal, moderate, serious or severe [2] area (the ''opt-in'' provision). In any such case, the Administrator must establish an appropriate effective date for such prohibition that is not later than 1 year after such application is received, and publish the application and effective date in the **Federal Register**.

In accordance with section 211(k)(6) of the Act, EPA promulgated § 80.70(k) at 40 CFR part 80, which provides that any area classified under 40 CFR part 81, subpart C, as a marginal, moderate, serious or severe ozone nonattainment area may be included as a RFG covered area on petition of the Governor of the State in which the area is located.

II. Modification of § 80.70(k)

The modification proposed today revises the opt-in provision of § 80.70(k) to apply it to areas classified as marginal, moderate, serious or severe ozone nonattainment areas as of November 15, 1990, the date the 1990 Amendments were enacted, or any time later. This proposed action will allow states to opt into the RFG program for areas which previously had been classified as marginal, moderate, serious or severe ozone nonattainment areas, but which have been redesignated to attainment. This will provide additional flexibility to the states to ensure continued compliance with the NAAQS for ozone. States with such redesignated areas will have the flexibility to include the RFG program in their maintenance plans or use RFG as a contingency measure for these areas.

This action is consistent with the text of section 211(k)(6), which states that areas ''classified under subpart 2 of Part D of title I as marginal, moderate, serious, or severe'' for ozone can opt into the RFG program upon the application of the governor of a state. This provision does not expressly limit the state's opt-in ability to areas currently classified as marginal, moderate, serious or severe ozone nonattainment areas. It is reasonable and appropriate to allow areas classified as marginal, moderate serious, or severe for ozone as of the date of the enactment of the 1990 Amendments, or any time later, to opt into the RFG program, in light of the plain language of section 211(k)(6) and the intent of Congress in enacting it.

The Conference Report to the 1990 Amendments, as passed, states that the opt-in provision ''clearly allows any nonattainment area which wants to opt-in to the reformulated gasoline programs to do so. They should be afforded every opportunity, and at the earliest possible date, to opt-in to the program subject to approval by EPA.'' (LH at 1024.) Although section 211(k)(6) allows states to opt into the RFG program only for nonattainment areas classified as marginal, moderate, serious or severe, Congress clearly intended this provision to provide states an opportunity to opt into the RFG program for these nonattainment areas if the state determines it is an appropriate means of achieving and maintaining the NAAQS for ozone. Today's action furthers this Congressional goal by ensuring that areas previously classified as marginal, moderate, serious or severe nonattainment areas, which have been redesignated to attainment, have the flexibility to participate in the RFG program. Many of these areas have ozone levels which are relatively close to the NAAQS, and are concerned about experiencing violations in the future, although currently in attainment. This will provide states an additional effective option that may be used to avoid the air quality problems that can lead to redesignation as a nonattainment area. Allowing states to opt into the RFG program for these previously classified ozone nonattainment areas will help to ensure that these areas continue to achieve and maintain compliance with the ozone NAAQS. States who have former nonattainment areas that become eligible for participation in the RFG program under this proposed rule should be cognizant of the fact that the current RFG opt-out procedures end December 31, 1997. The Agency is considering proposing opt-out procedures for the transitional period to Phase II of RFG, that will require voluntary states to remain in the program for a period of time substantially longer than the current 90 day opt-out procedures. The agency reserves its discretion to set an effective date of up to one year from the receipt of an application to opt-into the RFG program if supply or other concerns exist, and may, extend the effective date for two additional one-year periods consistent with Section 211(k)(6)(b).

EPA requests comment on whether a minimum lead-time of up to one year should be used in setting the effective date and whether this should apply to former non-attainment areas that opt-in and/or areas that are classified as non-attainment when they opt-in.

One idea suggested by an outside party was that EPA should require that the Governor consider the costs of other programs in making the determination to adopt RFG. EPA requests comment on the approach, including whether EPA would have authority to impose such a requirement and whether it would be appropriate to do so. If EPA determinies the legal authority exists for such a requirement and that it would be appropriate, it may be considered for adoption in the final rulemaking.

Today's action is consistent with EPA's interpretation of the opt-in provision of section 211(k)(6) as expressed in the preamble to the final rule establishing RFG and anti-dumping standards. *See* 59 FR 7808–7809 (April 16, 1994). Comments received on the rule included requests that certain areas categorized as unclassifiable/attainment areas, i.e., areas that were designated as in attainment for ozone as of the date of the 1990 Amendments, be allowed to opt into the RFG program. In response to these requests, EPA stated: ''Because of statutory limitations, attainment areas will not be allowed to opt-in to the RFG program.* * *'' 59 FR 7808. While this language indicates that unclassifiable/attainment areas are precluded from opting into the RFG program, it does not address the areas covered by this rule; i.e., areas previously designated as in nonattainment for ozone which have been redesignated to attainment. Today's proposed rule, therefore, addresses a sub-category of areas that EPA has not previously considered. EPA's interpretation of section 211(k)(6) as it applies to such areas is compatible with EPA's interpretation of this provision as it applies to current nonattainment areas. Since section 211(k)(6) allows states to opt into the RFG program only for nonattainment areas classified as marginal, moderate, serious or severe, this action extends the application of section 211(k)(6) only to redesignated areas which had been classified as marginal, moderate, serious or severe.

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calculating expected exceedances; and ''incomplete/no data'' areas, defined by EPA as areas that were designated nonattainment areas prior to enactment of the 1990 Amendments, but at the time of enactment did not have sufficient air quality monitoring data to determine whether they were or were not violating the NAAQS.

[2] The Los Angeles area is the only area classified as extreme for ozone, and it is a mandatory RFG covered area under the Act.

Any area that opts into the RFG program under § 80.70(k), whether currently or previously classified as marginal, moderate, serious or severe for ozone will be subject to all rules promulgated by the Agency for opting out of the RFG program.

III. Compliance with the Regulatory Flexibility Act

For the following reasons, the Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities and that a regulatory flexibility analysis is not necessary. In promulgating the RFG and anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. *See* 59 FR 7810–7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A–92–12.

Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in areas which opt into the RFG program as a result of this action, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations, located in areas which may become covered areas as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities. Since this action does not mandate any area to be included in the federal RFG program, but rather allows states the discretion to opt into the RFG program for certain areas, an estimate of the number of small entities which may ultimately be affected by this rule is unavailable.

IV. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or lean programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a significant regulatory action within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

V. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final FRG/anti-dumping and has assigned OMB control number 2060–0277 (EPA ICR NO. 1951.03)

Burden means the total time, effort , or financial resources expended by the persopns to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verfying information, processing and maintaing information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

VI. Unfunded Mandates Act

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

EPA has determined that the action taken today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VII. Statutory Authority

The statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7545(c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: March 21, 1997

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.70 is amended by revising paragraph (k) to read as follows:

§ 80.70 Covered areas.

* * * * *

(k) Any other area currently or previously classified under 40 CFR part 81, subpart C as a marginal, moderate, serious, or severe ozone nonattainment area as of November 15, 1990, or any time later, may be included on petition of the governor of the state in which the area is located.

* * * * *

[FR Doc. 97–7954 Filed 3–27–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–5803–6]

Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule making.

SUMMARY: In this document EPA is proposing to change the regulations for states to opt-out of the federal reformulated gasoline (RFG) program for areas where a state had previously voluntarily opted into the program. Under this proposal, if a state has not submitted an opt-out petition to EPA by December 31, 1997, it must participate in Phase II RFG until December 31, 2003. The Agency believes this proposed process is necessary to ensure a smooth transition between the two phases of the reformulated gasoline program.

The Agency is also proposing, that effective January 1, 2004, the current opt-out procedures, which provide that EPA-approved opt-out petitions become effective 90 days from approval, become effective again.

In addition, this proposed rule would require that states decide and submit to EPA a complete opt-out petition by December 31, 1997, if they want an opt-in area to continue to participate in Phase I of the RFG program up to December 31, 1999, but do not wish to participate in Phase II of the program.

This action does not affect the policies for opting in to the RFG program. In a separate action EPA is publishing a notice of proposed rulemaking, simultaneous with this proposal, which would permit former ozone nonattainment areas to opt into the federal reformulated gasoline program. EPA has not made a final determination on the policy for attainment area RFG implementation.

DATES: The Agency will hold a public hearing on this proposal if one is requested by April 4, 1997. If a public hearing is held, it will take place on April 18, 1997.

If a public hearing is held on this proposal, comments must be received by May 19, 1997. If a hearing is not held, comments must be receved by April 28, 1997. Please direct all correspondence to the address shown below.

To request a hearing, or to find out if and where a hearing is held, please call Christine Hawk at (202) 233–9000.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Ms. Christine Hawk at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460.

Materials relevant to this notice have been placed in Docket A–94–68. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

FOR FURTHER INFORMATION CONTACT: Christine Hawk or Diane Turchetta at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

SUPPLEMENTARY INFORMATION: A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D *filename.zip*

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Petroleum refiners, motor gasoline distributors and retailers.
State governments	State departments of environmental protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you

should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Extended Summary

Based upon EPA and industry concerns regarding smooth implementation of Phase II of the RFG program and public comments that were solicited in the Notice of Proposed Rulemaking [60 FR 31269] published June 14, 1995, EPA is proposing the following changes to the existing opt-out rule, which provides criteria and general procedures for states to opt-out of the RFG program through December 31, 1997. 61 FR 35673 (July 8, 1996).

This notice applies to areas where the state voluntarily opted into the program and subsequently decides to withdraw from the reformulated gasoline program, an action referred to as ''opt-out.'' This proposed rule provides the Agency's rules concerning criteria and procedures for states to opt-out certain areas from the RFG program after December 31, 1997. This proposal would not change the process a state must follow to petition for removal from the program or the criteria used by EPA to evaluate a request. This proposal does change the time period before the opt-out becomes effective for opt-out petitions received from January 1, 1998, through December 31, 2003. This period includes the first four years of Phase II (January 1, 2000, to December 31, 2003). The proposal also maintains the requirements that the governor, or the governor's authorized representative, submit an opt-out petition.

This proposal specifies that for all opt-out petitions received as of December 31, 1997, the existing procedures will apply and that the effective date that an area will be removed from the list of covered areas defined in 40 CFR § 80.70 will be 90 days (or more at a state's request) from the date of EPA's letter of notification to the Governor of the requesting state or from the effective date of an agency approval of a revision to the State Implementation Plan (SIP) where applicable. States which have opted in to the RFG program that do not submit a completed opt-out request by December 31, 1997 and subsequently submit an opt-out request before January 1, 2004, will be required to participate in the federal RFG program, including Phase II of the program, until December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency written notification to the State approving the opt-out petition, whichever date is later. Today's proposed requirements will also cover those areas opting into the RFG program subsequent to December 31, 1997. (i.e. areas opting-in during the transitional period must remain in the program at least until December 31, 2003). The opt-out procedures would revert back to the existing rule (90 day requirements) as of January 1, 2004.

Today's proposal will help provide certainty to the industry as it makes decisions that are likely to affect the supply and cost of reformulated gasoline, which in turn could affect the cost-effectiveness of Phase II RFG. Additionally, the proposal maintains the flexibility that states have in air quality planning to the degree possible and practicable.

I. EPA's Proposal for Opt-out Petitions Received January 1, 1998 Through December 31, 2003; and After December 31, 2003

A. Background

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels and air toxics in areas of the country that are required to or volunteer to adopt the program. Reformulated gasoline reduces vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. Reformulated gasoline also achieves a significant reduction in air toxics. In Phase II of the program nitrogen oxides (NO_X), another precursor of ozone, are also reduced. The 1990 Amendments to the Clean Air Act require reformulated gasoline in the nine largest cities with the highest levels of ozone.[1] In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for other ozone nonattainment areas.

EPA issued final rules establishing requirements for reformulated gasoline on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule, a number of states inquired as to whether they would be permitted to opt-out of the RFG program at a future date, or opt-out of certain of the requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). States with that concern wished to retain the flexibility to opt-out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993, did not include procedures for opting-out of the RFG program because EPA had not proposed and was not ready to adopt such procedures. Since then, the Agency has adopted general procedures for future opt-outs. 61 FR 35673 (July 8, 1996). These procedures apply to opt-out petitions received through December 31, 1997. Today's proposal provides new procedures for opt-out petitions received between January 1, 1998, through December 31, 2003. The existing procedures in place today will take effect again beginning January 1, 2004.

In the proposal to the previous opt-out rulemaking, EPA outlined its rationale for determining that it is appropriate to interpret section 211(k) as authorizing states to opt-out of the program. 60 FR 31269 (June 14, 1995). EPA concluded that any conditions on opting out should be focused on achieving a reasonable transition out of the program. There were two primary areas of concern to the Agency. The first was coordination of air quality planning. The second involved appropriate lead time for industry to transition out of the program.

Today's proposal addresses this lead time concern by changing the conditions for opting out during the period from January 1, 1998, to December 31, 2003. Before the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investments decisions based in part on anticipated demand for RFG. Small, unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall. Higher gasoline costs caused by regulatory uncertainty would diminish the benefits and cost-effectiveness of EPA's RFG program. Thus, EPA believes it must consider these special circumstances which affect industry directly and consumers indirectly and propose appropriate

[1] EPA recognizes that there are currently ten areas required to use Federal Reformulated Gasoline and that these areas currently do not have an opt-out option. Those areas are: Los Angeles—Anaheim—Riverside, CA; San Diego County, CA; Hartford—New Britain—Middletown—New Haven—Meriden—Waterbury, CT; New York—Northern New Jersey—Long Island—Connecticut area; Philadelphia—Wilmington—Trenton—Cecil County, MD; Chicago—Gary—Lake County, IL—Indiana—Wisconsin area; Baltimore, MD; Houston—Galveston—Brazoria, TX; Milwaukee—Racine, WI; Sacramento, CA.

changes to the opt-out procedures. Therefore, EPA today is proposing that states must decide by a certain date (December 31, 1997) if they intend for opt-in areas to participate in Phase I RFG up to December 31, 1999, and/or to participate in Phase II RFG, which begins on January 1, 2000. If a state has not submitted an opt-out petition by December 31, 1997, it must continue to participate in Phase I RFG through December 31, 1999, and participate in Phase II RFG until December 31, 2003.

B. Statutory Authority

The statutory authority for the action in this rule is granted to EPA by section 211(c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a). For a more complete discussion of statutory authority, see the proposal for general rules establishing criteria and procedures for states to opt-out of the RFG program. 60 FR 31271 (June 14, 1995).

As discussed there, EPA believes it is appropriate to interpret section 211(k) as authorizing states to opt-out of the RFG program, provided that a process is established for a reasonable transition out of the program. EPA believes allowing states to opt-out is consistent with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. Given this deference to state decision making, it follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the RFG program, as compared to requiring a state to justify its decision.

EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. The second involves appropriate lead time for industry to transition out of the program. Today's proposal addresses the latter concern. EPA's authority allows it the discretion to authorize opt-outs in a way that balances the interests of the parties affected by the regulations. The rule establishing opt-out criteria and procedures placed only limited conditions on the states, focusing on the information that must be submitted before EPA may approve an opt-out request. The rule also generally required a 90-day time period to pass before an EPA-approved opt-out became effective. Today, EPA is proposing to lengthen this time period for certain future opt-outs because it believes the circumstances affecting industry have changed enough to warrant an appropriate change.

Today's proposal changes the conditions for opting out during the period from January 1, 1998 to December 31, 2003. As the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investment decisions based in part on anticipated demand for reformulated gasoline. These decisions are likely to affect supply and ultimately affect the cost of reformulated gasoline. Uncertainty of supply and cost fluctuations could cause problems for and possibly diminish the benefits and cost-effectiveness of EPA's RFG program. Section 211(k) of the Act requires that reformulated gasoline achieve the greatest reductions in VOCs and toxics emissions, ''taking into consideration the cost of achieving such emission reductions . . .'' Thus, EPA believes it must consider these circumstances affecting industry that could potentially affect cost. EPA's proposal is designed to reduce the potential for adverse cost and supply impacts on the reformulated gasoline program.

C. Need for a Required Participation Period Until January 1, 2004

Under EPA's current opt-out provisions, some states may effectively opt-out of the reformulated gasoline program as of 90 days from the date EPA approves a state petition for the opt-out. 61 FR 35673 (July 8, 1996). The U.S. Department of Energy expressed its concerns in comments during the previous rulemaking that such a time frame to opt-out by states who originally intended to participate in Phase II of the reformulated gasoline program makes it more difficult for refiners to recover their investments in refinery facilities needed to comply with the requirements of Phase II reformulated gasoline. (Air Docket A–94–68) The Department further explained in its comments that the ability to price gasoline at a level that recovers investments depends very heavily on marginal supply and demand. Small unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall.

EPA shares the Department's concerns and, in the interest of minimizing the adverse supply and cost impacts for this gasoline program, is proposing a required participation period for reformulated gasoline opt-in areas intending to participate in Phase II of the reformulated gasoline program.

Refinery investments for Phase II RFG have been estimated by the U.S. Department of Energy to be about $1 billion for East Coast refiners and $2 billion for Gulf Coast PADD III refiners. Refiners who expect to be producing Phase II reformulated gasoline starting January 1, 2000, and who need additional facilities to meet the requirements of that gasoline, are likely to be making commitments to refinery investments through 1997, two years in advance of the Phase II start date. This decision to invest in the refining equipment needed to comply with Phase II is based on each refiner's product capabilities and likely anticipated demand for Phase II reformulated gasoline.

To comply with the Phase II requirements in 2000, each refiner is uniquely situated. For those refiners that plan to modify their refineries, different levels of investment would be required. The largest investments are expected to be made in the areas of desulfurization and alkylation to control sulfur and olefins. Some are expected to make early refinery changes to come into compliance with the complex model requirements in 1998. While the economic burden of Phase II compliance will fall disproportionately on some refiners, the Agency's main concern in this proposal is to provide a stable regulatory environment which will not inhibit cost recovery, given that this could lead to supply problems and cost fluctuations that could diminish the overall cost-effectiveness of the RFG program.

The Agency, in its estimates of the Phase II reformulated gasoline program costs [as stated in the regulatory impact analysis (RIA) for the final RFG rulemaking 59 FR 7716], has assumed a 10 percent real rate of return. Based on this assumed rate of return, refiners would need a six year investment recovery period. The Agency is soliciting comments on the range of investment recovery periods needed by the refineries who plan to invest capital in refining equipment for Phase II reformulated gasoline, the impact of future opt-outs on this period, and the expected impacts on supply and cost from such opt-outs.

The time required to recover refinery investments is highly variable, depending on a number of factors, including the size and type of investment, the refiner's financial situation and market conditions. The U.S. Department of Energy believes, based on the National Petroleum Council 1993 refinery study and on the Department's own examination of this issue, that at a minimum, a four-year period is required for the industry as a whole to recover its Phase II investments. The Department also

emphasized that an eight-year period was more adequate given the current competitive gasoline market.

If the Agency were to extend the current opt-out provisions, it would reduce the ability of refiners to plan for a relatively stable level of demand for Phase II reformulated gasoline and refiners would have a disincentive to invest in Phase II of the reformulated gasoline program. Without greater assurance of the markets for Phase II reformulated gasoline for a period sufficient for investment recovery, refiners may limit or delay investment and prepare for a smaller than currently-predicted reformulated gasoline demand. Refiners could minimize their production of and stocks for reformulated gasoline to protect refiners and gasoline distributors from the potential loss of reformulated gasoline markets. If refiners react to uncertain market conditions in these ways, there would be the increased potential for reformulated gasoline cost increase and supply shortages.

These potential actions, taken by refiners reacting to Phase II reformulated gasoline market uncertainty, would increase costs to refiners, ultimately resulting in higher gasoline prices for consumers. Limited or delayed investment in Phase II reformulated gasoline would create the potential for spot shortages or some refiners may attempt to quickly recoup their investment in Phase II, both situations causing gasoline price increases. EPA is concerned that the cost-effectiveness of the reformulated gasoline program would be jeopardized by regulatory uncertainty, as it pertains to the regulated community's ability to plan for providing the manufacturing capacity to produce reformulated gasoline to specified control areas. Section 211(k) of the Clean Air Act Amendments of 1990 requires that reformulated gasoline achieve the greatest reductions in volatile organic compounds (VOCs) and toxics emissions, ''taking into consideration the cost of achieving such emission reductions . . .'' Today's proposal is designed to reduce the potential for the adverse cost and supply impacts on the reformulated gasoline program.

The Agency is not trying to assure that all refiners will recover investments made in Phase II reformulated gasoline production in a given time period. EPA is instead seeking to structure the federal reformulated gasoline program in a way that minimizes the potential cost and supply impacts that could occur to refiners, thereby making it difficult to recover investments associated with producing this product. A refiner's decision to invest in reformulated gasoline is based, in part, upon an opt-in state's decision to have EPA require the sale of RFG in a particular area. Reformulated gasoline market uncertainty is increased when opt-in states are not bound to remain in the reformulated gasoline program and by the relatively simple process for states to opt out of the reformulated gasoline program provided for in the existing rule.

EPA is committed to ensuring that areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in their plans to attain and maintain the NAAQS. EPA is committed to maintaining, to a degree possible and practicable, the flexibility that states have in air quality planning by establishing procedures to opt out and substitute alternative control measures where the state considers appropriate.

EPA believes that today's proposal achieves a balance between allowing states with voluntary RFG areas the flexibility to opt-out of the program and giving industry a certain level of assurance as to a predictable demand for Phase II reformulated gasoline during the important investment recovery period of the program's early years. Today's proposal helps maintain a consistent market, adequate supplies and reasonable prices, thus maintaining the reformulated gasoline program's cost-effectiveness. EPA's own estimate of Phase II reformulated gasoline costs suggests consideration of a required participation period of six years, but the Agency believes that requiring reformulated gasoline in opt-in states for a period greater than four years may create a disincentive for continued participation in those areas where this program is currently considered a cost-effective control measure for the control of ground-level ozone and toxics. Although a longer recovery period of six or eight years may be needed by some refiners to fully recover all Phase II investments and less time for those who already have the capability to produce Phase II reformulated gasoline, the ability of states to opt-out again after 2004 does not mean that such opt-outs will occur. Refiners in general will still have significant demand for Phase II RFG for many years after 2004. EPA is proposing four years to attempt to strike a balance between the potential adverse impacts if refiners have too short of a time to recoup their Phase II investments and the need of states for some flexibility in using reformulated gasoline. EPA further believes that this balance benefits reformulated gasoline consumers by attempting to provide market consistency which should encourage adequate supplies and reasonable prices.

D. Effective Date for Approved Opt-Out Petitions

Today's proposal changes the date on which EPA-approved opt-out petitions become effective for opt-out petitions received January 1, 1998, through December 31, 2003.

This proposal modifies the existing requirement for any opt-out request received between January 1, 1998, and January 1, 2004. States which previously opted in to the RFG program that do not submit an opt-out request by December 31, 1997, and subsequently submit a completed opt-out request before January 1, 2004, will be required to participate in Phase II of the program until December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever is later.

If a state submits an opt-out request prior to December 31, 1997, the state can designate the opt-out to occur at any future date beyond the minimum 90-day period required under current opt-out procedures as long as it is not a date beyond December 31, 1999. For example, a state could submit an opt-out request before the December 31, 1997, deadline which specifies that the opt-out would not be effective until the end of the year 1999. Areas opting into the RFG program subsequent to December 31, 1997, will be treated the same as areas opting in prior to that date and will also be included in Phase II of the program until December 31, 2003.

EPA also proposes that, beginning on January 1, 2004, opt-out requests from states again be approved based on the opt-out provisions in effect before January 1, 1998.

EPA requests comments on two specific possible variations to this proposal in anticipation of interest in these options by outside parties:

(1) a possible exception to the required participation for areas which are redesignated as attainment areas during the period of January 1, 1998, through December 31, 2003. Such an exception would allow an opt-out request to be approved by EPA using the same 90 day opt-out effective date applicable before December 31, 1997 [See 61 FR 35673, July 8, 1996.]

(2) a similar participation period for areas first opting into the RFG program

subsequent to December 31, 1999, requiring these area to participate in Phase II of the program for at least four years from the date of their opt-in. This variation would establish the effective date for the removal of an area from the program as January 1, 2004, or 90 days from the Agency's written notification approving the opt-out, or four years from the effective date of their opt-in, whichever date is later, for all opt-out requests received after January 1, 2000.

II. Environmental Impact

If an area opts out of the reformulated gasoline program, it will not receive the reductions in VOCs, oxides of nitrogen (NO_x), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would only receive control of NO_x and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. These areas would be foregoing the air quality benefits obtained from the use of reformulated gasoline.

In this proposal, EPA continues to recognize that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. However, the proposal also seeks to ensure through the required participation period that the potential for a state to decide to opt-out of Phase II of the RFG program does not cause adverse impacts on the market demand for RFG and thus maintains the cost-effectiveness of the RFG program. EPA expects that states will in fact act prudently in exercising their ability to opt-out under these rules. Any environmental impacts of opting out are, therefore, not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

III. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments of 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.[3]

Pursuant to the terms of Executive Order 12866, Office of Management and Budget (OMB) has notified EPA that it considers this a significant regulatory action within the meaning of the Executive Order. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

IV. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's proposed rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

V. Economic Impact and Impact on Small Entities

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. This proposed rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas by providing more certainty for regulated parties. This proposed rule imposes no new requirements on states.

With respect to the portion of today's action which proposes to require participation until January 1, 2004, of opt-in areas unless they request to opt-out prior to January 1, 1998, today's proposal is not expected to result in any additional compliance cost to regulated parties. It does no more than maintain the status quo for those entities who have been supplying reformulated gasoline to the reformulated gasoline opt-in areas and imposes no additional requirements on parties that must comply with the RFG regulations.

With respect to the portion of today's proposed rule which would apply to opt-out requests applied for on or after January 1, 2004, the proposed rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied reformulated gasoline to the area opting out. This rule also establishes a transition period which maximizes affected parties' ability to plan for smooth transition from the reformulated gasoline program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of reformulated gasoline to conventional gasoline.

VI. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final FRG/anti-dumping rule and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: March 21, 1997.

Carol M. Browner,

Administrator.

40 CFR Part 80 is proposed to be amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Section 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.72 is amended by revising paragraphs (a), (c)(1) and (c)(2) and by adding paragraphs (c)(3) through (c)(7) to read as follows:

§ 80.72 Procedures for opting out of the covered areas.

(a) In accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

* * * * *

(c)(1) For opt-out petitions received prior to and including December 31, 1997, except as provided in paragraph (c)(2) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition, and no later than December 31, 1999.

(2) For opt-out petitions received prior to and including December 31, 1997, where reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(3) For opt-out petitions received January 1, 1998 through December 31, 2003, except as provided in paragraph (c)(4) of this section, the Administrator shall set January 1, 2004 or 90 days from the Agency's written notification to the state approving the opt-out petition, whichever date is later, as the effective date for removal of an area under paragraph (a) of this section.

(4) For opt-out petitions received January 1, 1998 through December 31, 2003, where reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) this section shall be January 1, 2004, or 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure, whichever date is later.

(5) For opt-out petitions received on or after January 1, 2004, except as provided in paragraph (c)(6) of this section, the Administrator shall set an effective date for removal of an area as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition.

(6) For opt-out petitions received on or after January 1, 2004, where reformulated gasoline is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) of this section shall be 90 days from the effective date for Agency approval of a revision to the plan that removes reformulated gasoline as a control measure.

(7) An area opting into the RFG program after December 31, 1997, will be subject to all requirements of this section.

* * * * *

[FR Doc. 97–7953 Filed 3–27–97; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Federal Crop Insurance Corporation

Crop insurance regulations:
- Fresh market (dollar plan) tomatoes; published 3-28-97
- Fresh market peppers; published 3-28-97
- Fresh market sweet corn; published 3-28-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish fisheries; published 2-26-97
- West Coast States and Western Pacific fisheries—
  - Western Pacific bottomfish fishery; published 2-26-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Washington; published 1-27-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Use of N11 codes and other abbreviated dialing arrangements; published 2-26-97

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:
- Drilling operations; hydrogen sulfide (H2S) requirements; personnel protection and exposure limits, etc.; published 1-27-97

JUSTICE DEPARTMENT

Drug Enforcement Administration

Federal regulatory reform:
- Controlled substances and listed chemicals diversion regulations; CFR chapter III consolidation; published 3-24-97

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Practice and procedure:
- E-Z Trial pilot program implementation and simplified proceedings for adjudicative process; rules revision; published 3-28-97

POSTAL SERVICE

Domestic Mail Manual:
- Restructuring and revision; published 3-28-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 3-13-97
- Dornier; published 2-21-97

VETERANS AFFAIRS DEPARTMENT

Adjudication; pension, compensation, dependency, etc,:
- Upgraded discharges; published 3-28-97

Organization, functions, and authority delegations:
- Deputy General Counsel et al.; published 3-28-97

Vocational rehabilitation and education:
- Veterans education—
  - Montgomery GI Bill-Active Duty; rates payable increase; published 3-28-97

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Surface Transportation Board

Tariffs and schedules:
- Freight forwarders in noncontiguous domestic trade; exemption from rate reasonableness and tariff filing requirements; published 2-28-97

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Agricultural Marketing Service

Fresh cut flowers and fresh cut greens promotion and information order; referendum procedures; comments due by 4-3-97; published 3-19-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine; foreign:
- Cotton and cotton products; comments due by 3-31-97; published 12-30-96

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Federal Crop Insurance Corporation

Crop insurance regulations:
- Rice; comments due by 3-31-97; published 1-29-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic coastal fisheries; comments due by 4-1-97; published 3-5-97
- Atlantic highly migratory species; comments due by 3-31-97; published 3-4-97
- Atlantic tuna; comments due by 3-31-97; published 3-12-97
- Northeastern United States fisheries—
  - Mid-Atlantic Fishery Management Councils; public hearings; comments due by 4-1-97; published 3-26-97

Marine mammals:
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  - Pacific offshore cetacean take reduction plan; comments due by 3-31-97; published 2-14-97

DEFENSE DEPARTMENT

Air Force Department

Privacy Act; implementation; comments due by 3-31-97; published 1-28-97

DEFENSE DEPARTMENT

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ENERGY DEPARTMENT

Occupational radiation protection:
- Primary standards amendments; comments due by 3-31-97; published 2-24-97

Privacy Act; implementation; comments due by 3-31-97; published 1-29-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Fluorescent lamp ballasts, revised life cycle cost and engineering analysis; public workshop; comments due by 4-1-97; published 2-7-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Practice and procedure:
- Hydroelectric projects; relicensing procedures; rulemaking petition; comments due by 4-4-97; published 1-30-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Gasoline distribution (Stage I); comments due by 3-31-97; published 2-28-97

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-31-97; published 2-28-97
- Missouri; comments due by 4-4-97; published 3-5-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Maine; comments due by 3-31-97; published 2-28-97

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  - Radionuclides; maximum contaminant levels; analytical methods; comments due by 4-4-97; published 3-5-97
  - Radionuclides; maximum contaminant levels; analytical methods; comments due by 4-4-97; published 3-5-97

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  - Characteristc metal wastes; treatment standards (Phase IV); data availability; comments due by 4-4-97; published 3-5-97

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- Testing requirements—
  - Biphenyl, etc.; comments due by 3-31-97; published 12-23-96

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Common carrier services:
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Use of N11 codes and other abbreviated dialing arrangements; comments due by 3-31-97; published 2-26-97

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Food and Drug Administration

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HEALTH AND HUMAN SERVICES DEPARTMENT

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Fish and Wildlife Service

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Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; comments due by 3-31-97; published 1-30-97

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TRANSPORTATION DEPARTMENT

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